


***SURFACE TRANSPORTATION BOARD***  
OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS,  
AND ADMINISTRATION

**MEMORANDUM**

April 28, 2003

EO-4  
Phillis

TO: David M. Konschnik, Director  
Office of Proceedings

FROM: Victoria Rutson, Chief   
Section of Environmental Analysis

SUBJECT: Post Environmental Assessment - Finance Docket 33928 - Norfolk Southern  
Corporation and Norfolk Southern Railway Company - Construction and  
Operation - in Indiana County, Pennsylvania

Attached is the Post Environmental Assessment (Post EA) for the above referenced rail line construction. This document addresses comments received by the Section of Environmental Analysis on the Environmental Assessment served November 20, 2002, and sets forth final recommended mitigation measures.

Based on our review of the comments and our independent analysis of all the issues, SEA concludes that the Proposed Action, if approved, would not significantly affect the environment if the recommended mitigation measures in the attached Post EA are imposed by the Board.

If you have any questions, please contact either me or Phillis Johnson-Ball of my staff at 202-565-1530.

Attachment

**April 28, 2003**

# **Post Environmental Assessment**

**Finance Docket No. 33928**

**Norfolk Southern Corporation and Norfolk Southern Railway  
Company – Construction and Operation – In Indiana County,  
Pennsylvania**

**Information Contact:**

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**Prepared by:**

**Surface Transportation Board  
Section of Environmental Analysis**

## **CONCLUSION**

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Based on the Section of Environmental Analysis' (SEA) review of all information available to date and its independent analysis of the proposed rail line construction and operation, comments received on the Environmental Assessment (EA) and mitigation requested by various Federal, state, and local agencies, as well as other concerned parties, and the mitigation offered by Norfolk Southern Corporation and Norfolk Southern Railway Company (Norfolk Southern), SEA concludes that the construction and operation of the proposed rail line would have no significant environmental impacts if the Surface Transportation Board (Board) imposes, and Norfolk Southern implements, the mitigation measures recommended in this Post Environmental Assessment (Post EA). Therefore, SEA recommends that the Board impose on any final decision approving the proposed rail line construction and operation, conditions requiring Norfolk Southern to implement the mitigation contained in this document.

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# INTRODUCTION AND ENVIRONMENTAL REVIEW PROCESS

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On December 27, 2001, Norfolk Southern filed an Application with the Surface Transportation Board pursuant to 49 USC 10901 seeking authority to construct and operate a new 5.26 mile rail line between Saltsburg and Clarksburg, in Indiana County, Pennsylvania, referred to in this document as the Proposed Action.

The Proposed Action is part of a larger Norfolk Southern project, the Keystone Project, which would involve the rehabilitation of a 10.89 mile out-of-service line of railroad, and the 1,450 feet modification to the existing Keystone Connection near Shelocta, Pennsylvania. The Keystone Project would create a new route from the south (the Southern Route)<sup>1</sup> for Norfolk Southern to serve the Reliant Energy Keystone Generating Plant (Keystone Plant).

Although the construction and operation of the Proposed Action are the subject of Norfolk Southern's Application before the Board, and the focus of the environmental analysis conducted in this case in order to provide a full understanding of the context for Norfolk Southern's proposal to develop the Proposed Action, the environmental analysis includes an overview of Norfolk Southern's Keystone Project.

SEA conducted an environmental review to ensure that the proposed action complies with the statutory requirements under the National Environmental Policy Act (NEPA) of 1969, as amended, the Board's environmental regulations,<sup>2</sup> and other applicable rules and/or regulations. SEA prepared the Environmental Assessment (EA) based on its independent analysis of the

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<sup>1</sup>The proposed Southern Route is composed of two parts: 1) the existing Norfolk Southern-operated Conemaugh Line from Freeport, Pennsylvania, running eastward to Saltsburg, Pennsylvania; and 2) the north/south running "Shelocta Secondary" from Saltsburg northward to Shelocta.

<sup>2</sup>49 CFR Part 1105.

proposed construction and operation, which included verifying the projected rail operations; performing land use, habitat, surface water, and wetland surveys; assessing effects to biological resources; and performing archeological and historic resource surveys. In addition, SEA's independent third-party consultant, Public Affairs Management, working under the direction, supervision and control of SEA, coordinated with Norfolk Southern and its environmental consultant and visited the proposed rail line construction site to document the existing conditions and assess the potential effects of the proposed project on the environment.

SEA served the EA on November 20, 2002. SEA concluded in the EA that the Proposed Action would have no significant environmental impacts if certain mitigation measures were implemented. The EA was served on all parties to the proceeding; appropriate Federal, state, and local agencies; and any party requesting copies of the document. In its service of the EA, SEA requested comments on all aspects of the document, including the scope and adequacy of the recommended mitigation measures. The 30-day comment period closed on December 19, 2002. Comments on the EA were filed by six agencies and interested parties and are attached as Appendix A.

SEA carefully reviewed and analyzed the comments in preparing its final recommendations to the Board contained in this Post EA. If the mitigation measures recommended in this Post EA are imposed by the Board, SEA believes that any potential environmental impacts resulting from construction and operation of the proposed rail line would not be significant.

## COMMENTS AND RESPONSES

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Copies of the EA were sent to approximately 50 agencies and interested parties for review and comment. Comments were filed by the United States Department of the Interior, Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers – Pittsburgh District (CORPS), the Pennsylvania Department of Environmental Protection (PADEP), Conemaugh Township, Mr. Horst Kunig, Kunig, Inc. (Mr. Kunig), and Mr. Francis Olliver (Mr. Olliver). In accordance with the Council on Environmental Quality's guidelines, similar comments have been grouped and a single response prepared for each group.

**Issue:** The CORPS commented that activities that would fill or disturb wetlands or other water bodies would require authorization under Section 404 of the Clean Water Act. The comment also stated that a wetland survey should be performed for the construction of the proposed rail.

**Response:** On December 12, 2002, Norfolk Southern submitted a Joint Application for a Pennsylvania Water Obstruction and Encroachment Permit and ACOE Section 404 Permit to the PADEP pursuant to Title 25 Pennsylvania Code Chapters 105 and 106 and Section 404 of the Clean Water Act. The Joint Permit Application contains a Wetlands Identification and Delineation Report/Functional Assessment, a Jurisdictional Determination, and the results of the delineation of potential jurisdictional waters of the United States performed by Norfolk Southern on the 5.26-mile rail line between Saltsburg and Clarksburg, Pennsylvania and the 1,450-foot rail link to the Shelocta Industrial Running Track near Shelocta, Pennsylvania. Norfolk Southern has agreed to comply with all mitigation requirements contained in an approved Joint Permit issued by ACOE and PADEP.

**Issue:** The USFWS stated that no report pursuant to the Fish and Wildlife Coordination Act was necessary, and that no further action was required on the project.

**Response:** Comment noted.

**Issue:** Mr. Kunig commented that procedures followed by SEA in the EA were improper and that SEA lacks authority to prepare an EA rather than an Environmental Impact Statement (EIS).

**Response:** SEA is authorized under 49 CFR 1105.2 to act on behalf of the Board with respect to implementation of the Board's obligations under NEPA. SEA provides the Board with an independent environmental review of proposals for which an environmental review is triggered by NEPA and the Board's implementing environmental regulations at 49 CFR Part 1105.

The Board's environmental rules generally require preparation of an EIS in rail construction cases, however, SEA can find that preparation of an EA is appropriate in individual cases when SEA determines that the particular proposal is not likely to have a significant environmental impact. Also, an Applicant may pursuant to 49 CFR 1105.6 request with written substantiation that an EA rather than an EIS be prepared for its proposal. SEA may grant that request under 49 CFR 1105.6.

On January 16, 2001, Norfolk Southern filed a request for waiver with SEA of the EIS requirement in compliance with 49 CFR 1105.6. After careful consideration and review of preliminary environmental and operational information and a site visit of the project area on November 20, 2000, by Public Affairs Management, SEA's third-party contractor, SEA determined that an EA was the appropriate level of environmental documentation. Furthermore, SEA determined that any adverse environmental impacts associated with this project were unlikely to be significant and could be addressed through appropriate mitigation measures. SEA in a letter dated January 24, 2001, notified Norfolk Southern that its request that an EA be prepared in this proceeding was granted.

**Issue:** Ex parte communications are prohibited under 49 CFR 1102.2(c)(1) and (2). Any communication between Norfolk Southern and SEA's preparation of an EA would constitute an ex parte communication. Norfolk Southern's deliberations with SEA would appear to constitute



a prohibited ex parte communications.

**Response:** Neither SEA nor Norfolk Southern have engaged in any inappropriate communications in the preparations of the EA. Under NEPA, the environmental review process is necessarily informal and all-inclusive and depends on cooperative consultations with the Applicant as well as other agencies and other interested parties with expertise, so that all possible environmental information, issues, and points of view will come before the agency. See City of Auburn v. United States, 154 F.3d 1025, 1033 (9<sup>th</sup> Cir. 1998), cert. denied, 527 U.S. 1022 (1999) (opportunity for public participation provides necessary checks and balances). The CEQ regulations implementing NEPA specifically anticipate the continuing involvement and participation of the Applicant throughout the process, so long as the agency independently evaluate the information submitted and is responsible for its accuracy. See e.g., 40 CFR 1506.5(a)-(c). Our environmental rules also provide that the railroad may “participate in the preparation of environmental documents.” 49 CFR 1105.4(j).

**Issue:** Mr. Kunig commented that the EA failed to demonstrate a need for the project.

**Response:** The EA clearly states, as described in Norfolk Southern’s Application, that the Proposed Action is part of the development of a new Southern Route that would provide a shorter, more efficient, and environmentally superior route for the delivery of coal to the Keystone Plant. Furthermore, the EA explains Norfolk Southern’s contention as described in its Application that the Southern Route would have greater capacity than the existing Northern Route and that it would save time, crews, locomotives and fuel required to serve the Keystone Plant.

**Issue:** Mr. Kunig comments that an EIS should have been prepared in order to adequately address the full spectrum of environmental issues that would result from the Proposed Action.

**Response:** SEA is responsible for conducting the environmental review on behalf of the Board. SEA is delegated the authority to make decisions on requests for waiver or modification of the Board’s NEPA process. In conducting its environmental review, SEA considered the requirements of NEPA, other related environmental laws and their implementing regulations, and

the Board's own environmental rules at 49 CFR Part 1105. After considering all available preliminary information, SEA determined that the preparation of an EIS was not warranted in this case. SEA based its determination on the nature and scope of the environmental issues that were likely to arise as a result of this project. Although, the Board's environmental rules generally require preparation of an EIS in rail construction cases, however, SEA can find that preparation of an EA is appropriate in individual cases when SEA determines that the particular proposal is not likely to have a significant environmental impact. Furthermore, the Applicant pursuant to 49 CFR 1105.6 requested with adequate written preliminary environmental substantiation that an EA rather than an EIS be prepared for its proposal. SEA granted that request under 49 CFR 1105.6.

In performing its environmental analysis, SEA considered the potential regional and local environmental impacts of the proposed construction and operation. SEA evaluated potential environmental impacts in the following areas: safety, transportation systems, energy, air quality, noise, cultural and historic resources, hazardous materials, natural resources, land use, socioeconomic effects directly related to physical changes in the environment and environmental justices. SEA also analyzed cumulative environmental effects of the Proposed Action and related projects.

SEA consulted with other government agencies, reviewed agency and public comments, undertook field reconnaissance activities and developed mitigation measures to avoid or reduce anticipated adverse impacts on the environment. Copies of the EA were served on all parties of record to this proceeding, interested parties, communities, and appropriate Federal, state and local agencies for review and comment. In addition, SEA published a notice of availability of the EA in the Federal Register. In preparing its final recommendations to the Board, SEA considered all of the comments on the EA, including late-filed comments; conducting further independent environmental analysis; and additional consultation with appropriate agencies.

The Board must approve a proposal to construct or operate a rail line unless it finds that the

proposal would be “inconsistent with the public convenience and necessity” (a broad public interest standard under which the Board weighs the transportation need or benefits against any kinds of harm likely to result). 49 U.S.C. 10901(c). The Board a process for receiving comments related to the economic merits of the Proposed Action. The process is separate from the environmental review process, which provides specific opportunities for the public to comment on the proposed construction and operation’s potential environmental effects. However, the Board will consider any economic issues, and the potential environmental effects in making its decision on the Proposed Action.

**Issue:** Mr. Kunig stated that the comment period for the EA should be extended 9 months.

**Response:** The 30 days comment period on the EA is consistent with the Board procedures established at 49 CFR 1105.10. Nevertheless, SEA accepted late-filed comments from Mr. Kunig, Mr. Olliver and Conemaugh Township. In addition to filing late comments, Conemaugh Township addressed the EA in a motion to strike filed with the Secretary of the Board. Mr. Kunig filed a petition and motion to dismiss the EA and to reopen the scoping process. SEA has addressed the late-filed comments on the EA and environmental comments included in those motions in this Post EA.

**Issue:** Conemaugh Township commented in a pleading filed with the Secretary of the Board that the transportation and safety mitigation measures proposed in the EA are an attempt to preempt the jurisdiction of the Pennsylvania Public Utility Commission to determine the extent and nature of crossing protections to be provided by Norfolk Southern at Bell Road.

**Response:** The mitigation measures discussed in the EA cover the range of impacts of the Proposed Action. All relevant and reasonable mitigation measures that could mitigate or avoid any adverse impacts associated with the Proposed Action are identified. Because the EA is a comprehensive environmental document, SEA identified and imposed a full spectrum of appropriate mitigation.

The mitigation proposed for Bell Road recognizes the Federal-State regulatory relationship pertaining to grade crossing safety. In the EA, SEA recommended that, subject to approval by the Pennsylvania Public Utility Commission, Norfolk Southern shall install certain warning devices and make roadway modifications at the new Bell Road at-grade crossing and, in consultation with the Pennsylvania Department of Transportation and the Pennsylvania Public Utility Commission, enhance the safety at the intersection of Bell and Rose Roads. While SEA has recommended and Norfolk Southern has agreed to install and pay for such grade crossing safety improvements, the Pennsylvania Department of Transportation and the Pennsylvania Public Utility Commission will select the final design for the Bell Road crossing and associated facilities.

SEA's intent in recommending this mitigation measure was not to preempt state or local laws, but to ensure that the concerns of the Township and appropriate agencies and regarding safety issues on Bell Road were addressed. SEA did not receive any comments from the Pennsylvania Department of Transportation or the Pennsylvania Public Utility Commission on this issue.

**Issue:** Mr. Olliver commented that the source of the definition of "Prime Agricultural Farmland" was not clear in the EA.

**Response:** The United States Department of Agriculture Soil Conservation Service (USDA) defines prime farmland as the land best suited to food, feed, forage, fiber, and oilseed crops. Prime farmland produces the highest yields with minimal inputs of energy and economic resources, and farming it results in the least damage to the environment.

In Indiana County 107,576 acres of farmland are classified as Prime Farmland and 146,936 acres of land are classified as farmland of Statewide Importance. Indiana County does not classify any of its soils as being of local importance. Approximately 18.35 acres (4.21 acres are classified as Prime Agricultural land and 14.14 acres are classified as farmland of Statewide Importance) of Prime Agricultural land and farmland of Statewide Importance would be permanently lost as a result of the proposed construction.

Consultation with Indiana County in February 2002 confirmed that Indiana County has no agricultural zoning and that the project area contains no protected agricultural resources. At the time of the consultation, the County was in the process of preserving its first protected areas. The affected areas, however, do not include the proposed project construction area. The Olliver Farm, the Evergreen Horse Farm and other land included in the proposed project construction area do not have protective agricultural status.

**Issue:** Mr. Olliver commented that the regulations of the Farmland Protection Policy Act of 1981 (FPPA) must be met if federal funding is to be used for the project.

**Response:** Norfolk Southern stated in its Application that it is seeking partial funding of the cost of construction of the Keystone Project (the Proposed Action is part of the Keystone Project) through Federal funds allocated by Congress for the Proposed Keystone Project. Norfolk Southern also stated that Federal funds for the Keystone Project have been ear-marked under the Congestion Mitigation and Air Quality Improvement Program (CMAQ), administered by the Pennsylvania Department of Transportation. Because the CMAQ process for the Keystone Project is not yet complete, it is unclear at this time if Federal funding will be used for the project. If Federal funding is used by Norfolk Southern for this project, it will comply with the regulations of the FPPA.

Nevertheless, the land use analysis conducted for the EA considered the regulatory requirements of FPPA. Only a small amount of land classified under the FPPA as either Prime Farmland would be affected by construction of the Proposed Action. The total amount of land subject to either FPPA classification is well below the threshold for further consideration of protection for farmland soils and evaluation of alternative sites. If Federal funding is used by Norfolk Southern for this project, it will comply with the regulations of the FPPA.

**Issue:** Mr. Olliver commented that the Proposed Action would interfere with the normal functioning of adjacent land use and is incompatible with local land use plans. Specifically, Mr. Olliver cites the intended subdivision plans for the Olliver Farm and the intended development

for the Pomposini tract adjacent to the right-of-way. Moreover, Mr. Olliver contends that the proximity of the Suwinski residence to the right-of-way (200 feet) should make it eligible for mitigation.

**Response:** The proximity of the Proposed Action to a property boundary is not, in and of itself, an adverse impact warranting mitigation. The location of all residences in relation to the proposed right-of way was considered in SEA's evaluation of potential adverse impacts to individual property owners and the community. Impacts to residences and other private property adjacent to the right-of-way was not considered to be significant and did not warrant mitigation.

To determine if the Proposed Action would conflict with existing land use plans for the project area, SEA consulted with the Indiana County Office of Planning and Development (Office of Planning and Development). The Office of Planning and Development states in a letter dated March 28, 2001, that no "current land use and development information" is on file for the project area. The plot plan that Mr. Olliver states is filed with the Office of Planning and Development does not appear as part of the existing land use plans adopted by Indiana County. Furthermore, the Office of Planning and Development did not identify any current land use plans associated with the Pomposini property.

To reduce impacts on adjacent homeowners that would be directly impacted by the project, Norfolk Southern purchased twenty-one parcels of real estate for the proposed project. Nineteen of the parcels were obtained by voluntary agreements with the owners. Two parcels (approximately 13 acres total) were acquired through the exercise of eminent domain. The two parcels acquired under eminent domain were parts of large tracts of farmland which were uninhabited and did not result in displacement of any residents.

Norfolk Southern states that it is a "public utility corporation" under the Pennsylvania Business Corporation Law (15 Pa C.S.A. §1511) and it has the right of eminent domain. In this proceeding, Norfolk Southern states that its exercise of that right in order to acquire certain property needed for the proposed project was in conformity with Pennsylvania law. The

Pennsylvania Business Corporation Law further provides that all proceedings by a public utility corporation to condemn property shall be conducted in compliance with the Pennsylvania Eminent Domain Code (26 P.S. §§1-101 et seq). Therefore Norfolk Southern states that there is no requirement in either the Pennsylvania Business Corporation Law or the Eminent Domain Code which would condition the exercise of the right of eminent domain on Board approval of the Proposed Action.

**Issue:** Mr. Olliver commented that due to the extensive cut and fill construction requirements, all 109 acres impacted by the proposed construction should be considered to be consumed by the Proposed Action and restored to pre-build conditions, not just the 23 acres for the rail bed.

**Response:** Norfolk Southern has agreed to mitigation measures that include restoring all disturbed lands as closely to their original condition as practical. Actual permanent conversion of land to rail roadbed and maintained right-of-way would total approximately 23 acres.

**Issue:** Mr. Olliver and Mr. Kunig commented that the EA does not adequately address the potential for economic disaster in their community should Norfolk Southern's anticipated diversion of truck to rail deliveries occur.

**Response:** Norfolk Southern projects that approximately 1 million tons of the current 2.2 million tons of Central Pennsylvania coal currently moving to the Keystone Plant by truck would be diverted to rail. The actual amount of Central Pennsylvania coal that would be diverted to rail would be determined by the demand of the Keystone Plant for rail delivered Pittsburgh Seam coal and truck delivered Central Pennsylvania coal. Nevertheless, it is not reasonably foreseeable that Norfolk Southern's proposal would cause adverse impacts on the local economy.

**Issue:** Mr Olliver commented that if Norfolk Southern is willing to provide 7 trips per week over the proposed Southern Route, it should consider increasing the Northern Route trips from 4.1 to 7 trips per week. According to Mr. Oliver, this would give Norfolk Southern a 70 percent increase in annual deliveries and eliminate the cost of building a Southern Route.

**Response:** As stated in its Application, Norfolk Southern believes that it is not feasible to

increase rail freight traffic over the Northern Route significantly beyond present levels. Because demand for coal delivery varies somewhat seasonally and is subject to other market factors, the number of trains operated to deliver coal to the Keystone Plant may vary in the range of five to seven trains per week. The proposed Southern Route would have a greater practical capacity, enabling Norfolk Southern to divert to rail transport coal traffic currently moving by truck on the local roads of Indiana County, Pennsylvania.

Norfolk Southern contends that the public and environment would benefit from the proposed construction and operation of the Southern Route because it would enable Norfolk Southern to move approximately 30 percent more coal per trip over a significantly shorter distance and utilize much less locomotive power per ton than via the current Northern Route.

**Issue:** The PADEP regional staff reviewed the Proposed Action and submitted comments on environmental regulatory and policy requirements that should be addressed as part of the proposed project.

**Response:** SEA consulted with the PADEP during the course of the environmental review for this project. As agreed upon by Norfolk Southern, it will obtain all necessary Federal, state, and local permits, minimize impacts into water waterways, undertake all appropriate State and local notification and comply with all applicable State and local ordinances. In addition, Norfolk Southern will report back to the Board regarding such compliance with environmental mitigation measures imposed by the Board, should this project be approved.

**Issue:** Mr. Olliver commented that there is no apparent advantage in fuel use of rail deliveries over truck deliveries. Mr. Kunig commented that the Proposed Action would not result in fuel savings. Additionally the projected fuel consumption figures in the EA are incorrect.

**Response:** Mr. Olliver correctly points out that the combined truck and train diesel fuel savings figures in the EA were incorrectly calculated. Inadvertent math errors were the source of the miscalculation. As such, Norfolk Southern recalculated the projected fuel savings. Combined truck and train diesel fuel savings would total approximately 271,850 gallons per year instead of



300,000 gallons per year as reported in the EA. The detailed analysis of the recalculated fuel saving is provided in Appendix B.

**Issue:** Mr. Kunig commented that the EA does not address expected pollution in Clarksburg and does not provide a warranty that no pollution will occur in Clarksburg. Mr. Kunig further commented that the Southern Route would divide Clarksburg into two halves.

**Response:** As discussed in the EA, SEA assessed the potential impacts to air quality for operations over the entire Shelocta Secondary, which passes through Clarksburg. The EA determined that fuel savings associated with the development of the Shelocta Secondary would have beneficial impacts to air quality in the region. Access to emergency, educational and social services in Clarksburg would not be significantly impeded by the operation of five coal trains per week over the proposed Shelocta Secondary.

**Issue:** Mr. Kunig recommended that an EIS feasibility study be conducted by the Board to assess the benefits of requiring power plants to use only nearby coal sources for their power generation operations and to convince Norfolk Southern to invest in the construction of a new power plant in lieu of development of the Southern Route. Mr Kunig comments that the EA contained information on the volume of coal it presently ships and the projected traffic levels that the public version of the Norfolk Southern's Application failed to provide. He comments that Norfolk Southern's failure to provide this information in the public version of its Application significantly inhibited the ability of the public to evaluate the environmental impacts of the Proposed Action. He requested that the scoping process under NEPA be reopened to determine if a conflict of interest exists among coal producers, transporters and customers (shippers).

**Response:** NEPA requires federal agencies "to the fullest extent possible" to consider the environmental consequences "in every recommendation or report on major federal actions significantly affecting the quality of the human environment." The EA has taken into consideration all information relevant to SEA's environmental analysis of the Proposed Action under NEPA. As required under NEPA, the SEA investigated, disclosed and evaluated the potential environmental impacts of the Proposed Action in the EA. SEA distributed the EA to Federal, State and local agencies and interested parties to ensure that all available information on

the Proposed Action was available for public review and comment.

The feasibility study recommended by Mr. Kunig is outside the scope of authority of the Board. Similarly, the Board does not have authority to require a railroad to construct a power plant or to restrict sourcing of fuel required by power plants. The Board is not authorized under NEPA to make the conflict of interest determination proposed by Mr. Kunig. In any case, producers, transporters and shippers are free to contract for the purchase and transport of materials required for use by shippers.

## **SEA's RECOMMENDED MITIGATION MEASURES**

Based on the information available to date, and its independent analysis of the proposed rail line construction and operation, all the comments and mitigation requested by various Federal, state and local agencies, as well as other concerned parties, and the mitigation offered by Norfolk Southern, SEA recommends that any final decision by the Board approving the proposed rail line construction and operation be subject to the following mitigation measures:

### **Transportation and Safety**

1. Norfolk Southern shall coordinate at-grade crossing construction with the Pennsylvania Department of Transportation and Indiana County in order to minimize traffic delay during crossing construction. Norfolk Southern shall use appropriate signs and barricades to control traffic during construction.
2. Norfolk Southern shall develop internal emergency response plans for construction to allow for agencies and individuals to be notified in case of an emergency. Norfolk Southern shall provide the emergency response plans to appropriate state and local entities.
3. As agreed to by Norfolk Southern, it shall install, at its sole cost, active rail/highway grade warning devices consisting of pole and cantilever mast mounted flashing lights and gates, and roadway modifications to improve the geometric conditions of Bell Road to

enhance vehicular sight distance, subject to the approval of the Pennsylvania Public Utility Commission.

4. As agreed to by Norfolk Southern, it shall improve, at its sole cost, the intersection of Bell and Rose Roads to enhance the level of safety at the existing intersection in consultation with the Pennsylvania Department of Transportation and the Pennsylvania Public Utility Commission.
5. Norfolk Southern shall obtain permission for and scheduling of lane restrictions or road closures, as well as detour approvals, in coordination with the appropriate public transportation agency. Norfolk Southern shall be responsible for the cost of all permits, detours, coordination with local officials and agencies, and public notifications related to temporary lane restrictions or road closures.
6. Norfolk Southern shall consider maintenance of emergency response capabilities and school bus schedules in planning and executing the necessary road work.
7. Norfolk Southern shall implement an inspection and maintenance program to minimize the potential for derailments and shall implement a spill prevention and emergency response plan in the event of a coal spill or derailment.

#### **Land Use**

8. Norfolk Southern shall ensure that all areas disturbed by project-related construction activities that are not located on the railroad's property (such as access roads, haul roads, crane pad and borrow pits) are promptly restored as closely to their original condition, as is practical, following conclusion of project-related construction activities at that site.
9. As agreed to by Norfolk Southern, it shall ensure that all controlled blasting work

required during excavation of roadbed cut shall be conducted by contractors in strict compliance with applicable regulations. In addition, all controlled blasting work shall be performed utilizing best management practices which include:

- A. Establishment and implementation of appropriate safety measures and procedures before, during and following all blasting activity for the protection of the public and employees;
- B. Performance of pre-blast surveys of adjacent properties and structures; and
- C. Performance of seismic monitoring during the blasting process.

### **Water Resources**

- 10. Norfolk Southern shall obtain all necessary Federal, state, and local permits if construction activities require the alteration of wetland, or other water bodies or if these activities would cause soil or other material to wash into these water resources. Norfolk Southern shall use appropriate techniques to minimize construction related impacts to wetlands and water bodies.
- 11. During rail line construction, Norfolk Southern shall disturb the smallest area practicable around any waterway.
- 12. In instances in which Norfolk Southern uses contractors to apply herbicide, for right-of-way maintenance, Norfolk Southern shall use only contractors trained in herbicide application and shall require those contractors to follow label directions in applying herbicides and limit the amount potentially entering waterways. Norfolk Southern shall require contractors to use only herbicides regulated for such uses with Environmental Protection Agency and follow all state regulations that requires their use.
- 13. As agreed to by Norfolk Southern, it shall comply with mitigation requirements contained

in the joint permit to be reviewed by the U.S. Army Corps of Engineers and issued by the Pennsylvania Department of Environmental Protection, including the creation of new wetlands acreage to replace altered wetlands in such replacement ratio as the joint permit shall specify.

### **Biological Resources**

14. Norfolk Southern shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding fiber mats, straw mulch, plastic lined slope drains, and other erosion control devices. Once the track is constructed. Norfolk Southern shall establish vegetation in the embankment slope to provide permanent cover and prevent erosion. If erosion develops, Norfolk Southern shall take steps to develop other appropriate erosion control procedures.
15. If Federal funding is used by Norfolk Southern for this project, it will comply with the regulations of the Farmland Protection Policy Act of 1981.

### **Air Quality**

16. Norfolk Southern shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

### **Noise**

17. Norfolk Southern shall control temporary noise from construction equipment through the use and maintenance of muffler systems on machinery.

18. Norfolk Southern shall comply with the Federal Rail Administration regulations (49 CFR Part 210) establishing decibel limits for train operations.

### **Cultural Resources**

19. If Norfolk Southern identifies any undiscovered archaeological remains or other cultural resources during construction activities, Norfolk Southern shall immediately cease work, and contact the Pennsylvania State Historic Preservation Officer regarding appropriate measures to protect the resource.
20. As agreed to by Norfolk Southern, it shall complete a Phase III archaeological investigation of the four sites identified by the Pennsylvania Historic Museum Commission (PHMC) as potentially eligible for listing on the *National Register of Historic Places*. Norfolk Southern shall prepare a report on the Phase III archaeological investigation for review by the PHMC. Pending completion of the Section 106 process, the Norfolk Southern shall ensure that the four archaeological sites – the Reed Site (Cribb Site) (36IN424), the Olliver I site portion of (36IN157) in the proposed right-of-way, the Olliver III site the portion of (36IN160) in the proposed right-of-way, and the Olliver IV site (36IN428) are not adversely impacted.

**APPENDIX A**  
**COMMENT LETTERS**



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**DEPARTMENT OF THE ARMY**  
**PITTSBURGH DISTRICT, CORPS OF ENGINEERS**  
**WILLIAM S. MOORHEAD FEDERAL BUILDING**  
**1000 LIBERTY AVENUE**  
**PITTSBURGH, PA 15222-4186**

REPLY TO  
ATTENTION OF:

December 3, 2002

Operations and Readiness Division  
Regulatory Branch  
200100442



Phillis Johnson-Ball  
Surface Transportation Board  
Case Control Unit  
1935 K Street NW Suite 700  
Washington, District of Columbia 20423

Dear Ms. Johnson-Ball:

I am referring to the Environmental Assessment (EA) Finance Docket No. 33928, Norfolk Southern Corporation and Norfolk Southern Railway Company - Construction and Operation - in Indiana County, Pennsylvania. Norfolk Southern is proposing to construct and operate the Saltsburg Connection, rehabilitate 10.89 miles of out-of-service but not abandoned rail line (Clarksburg Segment) and modify the existing Keystone Connection (collectively to be known as the Shelocta Secondary) in wetlands adjacent to and unnamed tributaries of Blacklegs Creek.

As indicated in the EA, it has been determined that jurisdictional wetlands do exist on this property. Section ES 7.0, #10 states that permits would be required to alter wetlands, or other water bodies or if these activities would cause soil or other material to wash into these water resources. Fills or earth disturbances including the installation of structures or bank protection within these wetlands or water bodies would require authorization from this office under Section 404 of the Clean Water Act. As stated in a letter dated March 9, 2001, to the Surface Transportation Board, a wetland survey should be performed for the construction of this rail line. A copy of this letter is enclosed.

You may apply for both Federal and state authorizations through the Pennsylvania Department of Environmental Protection (PA DEP) at:

Indiana County Conservation District  
251 Route 286 North  
Ag Service Center  
Indiana, PA 15701-9011

Department of Environmental Resources  
Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
(412) 442-4303

In planning future development every effort should be made to avoid and minimize wetland impacts to the fullest extent practicable. If encroachments are planned within the wetland areas they should be accurately delineated and this office again contacted to determine permit requirements. Development of the upland areas would not require authorization from this office.

Prior to submittal of an application, the wetland boundaries should be accurately delineated and compared to development plans so that the total project impacts may be determined.

We will continue to work with you in your development plans in order to protect the aquatic resources. If you have any questions, please contact Nancy Mullen at (412) 395-7170.

Sincerely,

**SIGNED**

Albert H. Rogalla  
Chief, Regulatory Branch

Enclosure



**DEPARTMENT OF THE ARMY**  
**PITTSBURGH DISTRICT, CORPS OF ENGINEERS**  
**WILLIAM S. MOORHEAD FEDERAL BUILDING**  
**1000 LIBERTY AVENUE**  
**PITTSBURGH, PA 15222-4186**

REPLY TO  
ATTENTION OF:

March 9, 2001

Operations and Readiness Division  
Regulatory Branch  
200100442

Ms. Chris Caperton  
Public Affairs Management  
1925 K Street, NW  
Suite 450A  
Washington, District of Columbia 20006

Dear Ms. Caperton:

I refer to your letter of February 27, 2001 concerning the Norfolk and Southern Railway construction of a rail line in Indiana County, Pennsylvania (Docket No. 33928).

This office had some previous conversations with Norfolk and Southern concerning the proposed railway line. As a result of those discussions, we stated that if there were wetlands present that would be impacted by the work, a Department of the Army Permit must be issued prior to initiation of any work.

It was stated that the railway should have a wetland survey made of the right-of-way and the results forwarded to this office for verification. At that point, the railroad would be made aware of the Corps' permit requirements and what process would be utilized to consider the work pursuant to Section 404 of the Clean Water Act.

If you require further information, please contact Bob Neill at (412) 395-7156.

Sincerely,

**SIGNED**

Albert H. Rogalla  
Chief, Regulatory Branch



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Pennsylvania Field Office  
315 South Allen Street, Suite 322  
State College, Pennsylvania 16801-4850



December 20, 2002

Phillis Johnson-Ball  
Environmental Project Manager  
Surface Transportation Board  
1925 K Street NW, Suite 500  
Washington, DC 20423

Dear Ms. Ball:

Due to a lack of personnel and/or funds, no action is being taken on the following public notice(s).

| <u>Notice Number</u> | <u>Date of Notice</u> | <u>Applicant's Name</u>  |
|----------------------|-----------------------|--|
| 33928                | November 20, 2002     | Norfolk Southern Corporation<br>Norfolk Southern Railway Company |

Accordingly, no report pursuant to the Fish and Wildlife Coordination Act (48 Stat. 401, as amended, 16 U.S.C. 661 *et seq.*) is anticipated at this time. However, if project circumstances change, or new information regarding impacts to fish and wildlife becomes available, the Service may determine that a report to the Corps of Engineers on the proposed project is appropriate.

Sincerely,

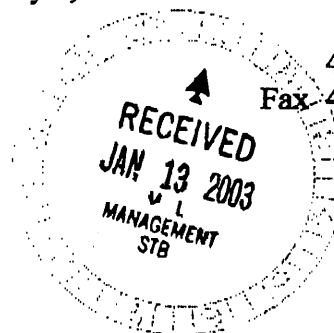
*Cindy L. Elliott*  
for David Densmore  
Supervisor

**Pennsylvania Department of Environmental Protection**

**400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
January 6, 2003**

**Southwest Regional Office**

**Phillis Johnson-Ball  
Environmental Project Manager  
Surface Transportation Board  
1925 K Street NW, Suite 500  
Washington, DC 20423**



**412-442-4189  
Fax 412-442-4194**

**Re: Environmental Assessment Project  
Norfolk Southern Railroad  
STB ID #3239, Env. Finance Docket 32392  
Various Municipalities  
Indiana County**

**Dear Ms. Johnson-Ball:**

The Department of Environmental Protection's (DEP) regional program staff have reviewed the above project for environmental regulatory and policy requirements, and submit the following comments for your attention:

**General**

1. It is recommended that the applicant contact the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation, Box 1026, Harrisburg, PA 17108-1026, telephone number 717-787-8947, to determine if the project will pass through or otherwise impact historic or archaeological sites. Any review comments by the commission should be included with the appropriate DEP permit applications.
2. The Pennsylvania Natural Diversity Inventory List (PNDI) should be cross-checked against the site location to determine if any resources of special concern are located within the project area.
3. Any utility company with transmission lines within the project area should be contacted at least 30 days prior to work start by the contractor. It is further recommended that the applicant or contractor call 1-800-242-1776 before beginning any excavation.

**Environmental Cleanup**

4. If you plan to seek environmental liability protection under Act 2 or approved-use authorization by the Department, a historical records search should be performed to determine all previous industrial operations conducted on this site. Contaminant testing



Phillis Johnson-Ball

- 2 -

January 6, 2003

should be comprehensive enough to indicate all previous sources of contamination. Off-site migration of contaminants through air, soil, or groundwater should be thoroughly addressed. If you encounter contaminated soil during excavation contact the Southwest Region's Waste Management representative at 412-442-4125, and Environmental Cleanup Program representative at 412-442-4091, for proper management.

5. If above or below-ground storage tanks are to be removed, contact the Department's Storage Tank Program representative at 412-442-4091.

### **Mining**

6. If construction blasting is necessary contact the blasting inspector for specific requirements. Mining of coal seams exposed by this project or impact on existing mining operations may require a permit or approval from DEP's Bureau of Mining and Reclamation. For further information, please contact:

Bureau of Mining and Reclamation  
Cambria Office  
286 Industrial Park Road  
Ebensburg, PA 15931-4119  
814-472-1900

7. Should this project require the collection and treatment of acid mine drainage, it is recommended that the applicant or contractor contact DEP's Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000, Attention: Facilities Chief, in order to obtain information on permitting requirements.
8. An NPDES discharge permit for the pumping or draining of mine pools or strip pit impoundments is required, either as part of a surface mine reclamation permit, or as a separate BWQM NPDES permit. For further information, please contact the Department's Bureau of Water Management at this address.

### **Oil and Gas**

9. The proposed project is located in an area having numerous natural gas wells. It is recommended that the applicant contact the Bureau of Topographic and Geologic Survey at this address at 412-442-4230 to obtain the location of the wells prior to conducting any activity. When conducting operations near gas wells, caution should be taken not to disturb the wells, pipelines (may be buried or exposed), or equipment, etc. Should an oil or gas well be uncovered during construction, please call the Department's Oil and Gas Program at 412-442-4015.

Phillis Johnson-Ball

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January 6, 2003

**Soils and Waterways - Phone 412-442-4315**

10. Work in and along streams and wetlands will require a Water Obstruction and Encroachment Permit from the Soils and Waterways Section. The area regulated is the stream and any area within the 100-year flood boundaries of any Federal Flood Insurance Study or 50 feet from the top of each stream bank if no flood insurance study exists. All wetland impacts are regulated. Please contact the Soils and Waterways representative at this address.
11. Earth moving activities, including pipe trenching, will require an NPDES Storm Water Permit for Discharges of Storm Water Associated With Construction Activities.

Because the disturbed area is more than 5 acres a General NPDES Storm Water Permit for Discharges of Storm Water Associated With Construction Activities is required except in watersheds designated High Quality or Exceptional Value. In a watershed designated High Quality or Exceptional Value an individual NPDES Storm Water Permit for Discharges of Storm Water Associated With Construction Activities is required.

For further information, contact the Conservation District Office in the county in which the earth moving will take place.

**Water Supply Management - 412-442-4217**

12. Abandoned wells should be handled in accordance with the requirements of the Water Supply program. Contact DEP's Water Supply representative at 412-442-4217.
13. Abandonment, removal, or plugging of water lines must be coordinated with the owner of the main lines.
14. All downstream public water supplies which may potentially be affected by sedimentation or stream flow changes must be directly contacted by the contractor at least 30 days prior to work start. Any public water supply problem resulting from this project must immediately be reported to DEP's Water Supply Management at this address.
15. If this project impacts any public drinking water source, both the public water supply and the appropriate DEP District Office or DEP's Water Supply Management Program must be notified at least 30 days prior to work start.

**Armstrong-Westmoreland Co.**

Armbrust Building  
R.D. #2, Box 603-C  
Greensburg, PA 15601  
412-925-5400

**Fayette-Greene Co.**

Fayette County Health Center  
100 New Salem Road  
Uniontown, PA 15401  
412-439-7431

**Beaver County**

206 Municipal Building  
715 Fifteenth Street  
Beaver Falls, PA 15010  
412-847-5270



Phillis Johnson-Ball

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January 6, 2003

Cambria-Indiana-Somerset

286 Industrial Park Road  
Ebensburg, PA 15931  
814-471-5071

Washington Co.

3913 S. Washington Road  
McMurray, PA 15317  
412-565-5080

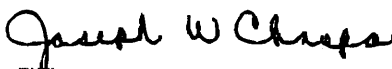
16. If the project involves the construction of a drinking water supply to serve 15 or more connections or 25 or more people on at least a 6-month basis, a public water supply permit may be necessary. This facility will qualify as a public water supply as defined in ~~the Pennsylvania Safe Drinking Water Act, and requires a permit from the Department.~~ The applicant should contact DEP's Southwest Regional Office, Water Supply Management, at 412-442-4217, for further information on permitting, water quality testing, monitoring responsibilities and treatment requirements.

**Water Management - Phone 412-442-4038**

17. Wastewater Discharges - Any discharge to a waterway or the ground surface requires either an NPDES discharge permit, Water Quality Management Part II Permit or temporary discharge approval. Temporary discharge approvals must meet the current guidelines. If treatment facilities are needed to meet the effluent limitations imposed by the NPDES permit, a Part II permit is required for the construction of those treatment facilities. Contact DEP's Water Management Program representative at 412-442-4038.

Should you have any questions or if the project is significantly modified in the future, please contact this office at the telephone number listed above.

Sincerely,



Joseph W. Chnupa  
Assistant Regional Director  
Southwest Regional Office

SEA

**Before the  
Surface Transportation Board**

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STB Finance Docket No: 33928 (Environmental Assessment)  
Norfolk Southern Corporation and Norfolk Southern Railway Company -  
Constructions and Operation - In Indiana County, Pennsylvania

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**COMMENTS AND MOTION TO STRIKE BY  
CONEMAUGH TOWNSHIP**

Submitted by:

Richard R. Wilson, Esq.  
Pa. I.D. #25661  
RICHARD R. WILSON, P.C.  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601  
(814) 944-5302  
(814) 944-6978 fax

DATED: December 20, 2002

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Part of  
Public Record

**Before the  
Surface Transportation Board**

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STB Finance Docket No: 33928 (Environmental Assessment)  
Norfolk Southern Corporation and Norfolk Southern Railway Company -  
Constructions and Operation - In Indiana County, Pennsylvania

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**COMMENTS AND MOTION TO STRIKE BY  
CONEMAUGH TOWNSHIP**

I. INTRODUCTION

On January 22, 2002, Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NSRC") filed an application under 49 U.S.C. §10901(a) for authority to construct and operate a 5.26 mile line of railroad in Indiana County, PA. The new line is part of a larger project creating a new route from the south for NSRC to serve the Reliant Energy Keystone Generating Plant ("Keystone Plant") at Sherlocta, PA.

On November 17, 2000, SEA granted NSRC's request for a waiver of the six month pre-filing notice generally required for construction projects under 49 C.F.R. §1105.10(a). NSRC filed a request for waiver of the Environmental Impact Statement under 49 C.F.R. 1105.6 on January 16, 2001 which was granted by SEA in a letter dated January 24, 2001. Because a third party consultant has been retained to prepare the necessary environmental documentation under the Board's direction and supervision, the Board's environmental reporting requirements are not applicable to this application. See 49 C.F.R. §1105.10(d).

In an order issued November 20, 2002, the Board concluded that based on the information provided from all sources to date and its independent analysis, SEA preliminarily

concluded that construction and operation of the proposed rail line would have no significant environmental impacts if the Board imposed and Norfolk Southern implemented recommended mitigation measures. Consequently, the Environmental Impact Statement process was unnecessary in this proceeding. By a companion order issued November 20, 2002 the Board gave notice of the availability of the Environmental Assessment and requested comments. In that order the Board states:

Accordingly, SEA recommends and if the Board approves this project, Norfolk Southern be required to implement the mitigation set forth in the EA.

The parties were invited to provide written comments to the Board no later than December 19, 2002.

## II. CONEMAUGH TOWNSHIP'S COMMENTS AND MOTION TO STRIKE

Conemaugh Township is a small rural township in southwestern Indiana County, Pennsylvania through which the proposed Saltsburg Connection is to be constructed. Conemaugh Township officials have communicated with the Board in connection with the NS application and have submitted information to SEA in connection with environmental impacts related to NS proposed construction of this line. Of principle concern to Conemaugh Township is the refusal of NS to construct a grade separated crossing where the proposed line crosses Bell Road. The discussion of this crossing in the Environmental Assessment document fails to adequately address the pertinent safety issues at this location. The NS crossing proposal presupposes local speed limits of 25-30 mph and the grade crossing and related road modifications are predicated on that speed limit. However, it is highly unlikely that this local speed restriction will be uniformly observed and the crossing design does not adequately address dangerous seasonal conditions at this crossing, i.e., snow, ice and fog which are not reflected in

the stopping distances and line of sight distances which NS has proposed for this crossing. Simply put, the NS at grade crossing design is predicated on normative conditions at this crossing rather than on recurring seasonal hazardous conditions so that NS can avoid the cost of a grade separated crossing for Bell Road.

Most problematic is SEA's preliminary recommendation that the Board impose the following NS crossing design as a mitigation measure in its decision approving the construction and operation of the Saltsburg Connection:

3. As agreed to by NS, it shall install, at its sole cost, active rail/highway grade warning devices consisting of pole and cantilever mast mounted flashing lights and gates and roadway modifications to improve the geometric conditions of Bell Road to enhance the sight distance, subject to the approval of the Pennsylvania Public Utility Commission.

4. As agreed to by NS, it shall improve, at its sole cost, the intersection of Bell and Rose Roads to enhance the level of safety at the existing intersection in consultation with the Department of Transportation and the Pennsylvania Public Utility Commission.

These recommended mitigation measures would be imposed by the Board as a condition for approving the proposed rail line construction and operation application. However, NS efforts to have the Board adopt these mitigation measures as conditions to its application approval is nothing less than an attempt by the applicant to preempt the jurisdiction of the Pennsylvania Public Utility Commission to determine the extent and nature of crossing protections to be imposed on NS at Bell Road pursuant to the provisions of 66 Pa. C.S.A. §§2702 and 2704.

There is no need for the STB to exercise its preemptive jurisdiction in this proceeding with respect to rail highway crossing matters. NS has already filed a crossing application with the PaPUC and submitted itself to the jurisdiction of that agency. The PaPUC has already commenced a proceeding to address the appropriate level of crossing protection at Bell Road and other crossings on this proposed line. Accordingly, the crossing mitigation measures

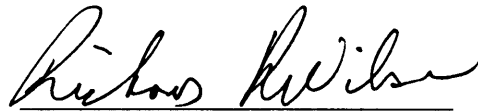
recommended by SEA are unnecessary because the PaPUC will address those crossing issues in a state administrative proceeding. In this proceeding, NS has made no demonstration that Pennsylvania's crossing regulations are preempted by ICC Termination Act of 1995. C.f. American Trucking Assn v. ICC, 242 F.Supp. 597 (D.C. Dist 1965) aff'd 382 U.S. 372 (1966).

Accordingly, Conemaugh Township moves to strike Paragraph 1 - 6 and particularly Paragraphs 3 and 4 of the proposed mitigation measures set forth under the heading Transportation and Safety as contained on pages ES 10 and ES 11 and 5-3 and 5-4 of the preliminary Environmental Assessment Report, service date November 20, 2002.

Respectfully submitted,

RICHARD R. WILSON, P.C.

by:

A handwritten signature in black ink, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson

Attorney for Conemaugh Township

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments and Motion to Strike by Conemaugh Township has been served upon the following persons by U.S. First Class mail, postage prepaid, on this 20<sup>th</sup> day of December, 2002, as follows:

Horst E. Kunig, President  
Kunig Inc.  
P.O. Box 192  
Saltsburg, PA 15681-0192

The Honorable John P. Murtha  
U.S. House of Representatives  
Washington, DC 20510

The Honorable Mark Schweiker  
Governor of Pennsylvania  
225 Main Capitol Building  
Harrisburg, PA 17120

Pennsylvania Attorney General Mike Fisher  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

The Honorable Samuel H. Smith  
House box 202020  
Harrisburg, PA 17120-2020

The Honorable Jeff Coleman  
House Box 202020  
Harrisburg, PA 17120-2020

The Honorable Richard A. Geist  
House Box 202020  
Harrisburg, PA 17120-2020

The Honorable Donald C. White  
618 Philadelphia Street  
Indiana, PA 15701

Supervisor Thomas Kier  
Conemaugh Township Supervisor's Office  
RD 1, Box 206  
Saltsburg, PA 15681

Supervisor James Pierce  
Conemaugh Township Supervisor's Office  
RD 1 Box 206  
Saltsburg, PA 15681

Supervisor John Weimer  
Conemaugh Township Supervisor's Office  
RD 1 Box 206  
Saltsburg, PA 15681

Robin Cribbs, Secretary  
Conemaugh Township Supervisor's Office  
RD 1 Box 206  
Saltsburg, PA 15681

The Honorable Bradley L. Mallory  
Secretary, Department of Transportation  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

The Honorable Glen R. Thomas  
Chairman, Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Francis L. Olliver  
95 Rose Road  
Saltsburg, PA 15681

Constance A. Sadler, Esq.  
Sidley, Austin, Brown & Wood  
1501 K Street, N.W.  
Washington, DC 20005

Joseph C. Dimino  
John V. Edwards  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510-2191



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Richard R. Wilson, Esq.  
Attorney for Conemaugh Township



Francis L. Olliver  
95 Rose Road  
Saltsburg, PA 15681  
January 7, 2003

Roger Nober, Secretary  
Surface Transportation Board  
1925 K Street  
Washington, DC 20423-0001

Re: STB Finance Docket No. 33928 (Environmental Assessment)  
Norfolk Southern Corporation and Norfolk Southern Railway  
Company - Construction and Operation - In Indiana County, PA

Dear Secretary Nober:

After receiving a copy of Conemaugh Township's comments to the above mentioned Environmental Assessment, I fear that my initial comments dated December 17, 2002 may have been misdirected.

Being inexperienced in these matters, I am re-submitting my initial comments along with several additions through the same channels as Conemaugh Township.

Upon as thorough review as possible during the brief comment period allocated (during the holidays), I find the Environmental Assessment to be riddled with untrue and unsubstantiated statements and in general written with prejudice in favor of Norfolk Southern's desires.

Due to the serious nature of this matter, I respectfully request that my comments be taken into consideration.

Thank you for your attention in this matter.

Sincerely,



Francis L. Olliver

cc: Dr. Horst E. Kunig  
The Honorable John P. Murtha  
The Honorable Samuel H. Smith  
The Honorable Jeff Coleman  
The Honorable Dave Reed  
The Honorable Richard A. Geist  
The Honorable Donald C. White  
Supervisor John Weimer  
The Honorable Bradley L. Mallory  
The Honorable Glen R. Thomas  
Constance A. Sadler, Esq.  
Mr. Joseph C. Dimino

## EXECUTIVE SUMMARY

### ES 6.1 Land Use and Recreation

There are several grossly incorrect statements in this section:

1. "There is no Prime Agricultural Farmland present in the area of the Proposed Action."

I would like to know where Norfolk Southern gets its definition of Prime Agricultural Farmland? Our vegetable farm has...

extensive underground drain tile to eliminate wet spots

buried 3" PVC water line with strategically placed outlets to accommodate irrigation throughout the farm

a one acre pond to supply water for the irrigation system

contour strips to minimize soil erosion

deer deterrent fencing enclosing the entire crop acreage

There are only two other farms in Indiana County with such amenities. Additionally, the letter from USDA to Chris Caperton, Public Affairs Management, dated March 22, 2001 states that Prime Farmland is involved and that if Federal funding is used, the regulations of the Farmland Protection Policy Act of 1981 must be met.

The Evergreen Horse Farm also has numerous amenities including a two acre pond, large oval track for sulky horse training, fencing and cross fencing, large stable barn and other smaller stable buildings, all of which would qualify it as Prime Agricultural Farmland.

2. "The Proposed Action would not conflict with any land use plans or zoning ordinances at the local, county or state level."

Filed in the Indiana County Courthouse is a plot plan for our farm which we intended to implement upon retirement. The Proposed Action totally renders this option impractical since the construction path dissects several of the proposed plots.

The planned development of the Pomposini property would also be rendered impossible by the "Proposed Action".

3. "No residents would be displaced by the Proposed Action."

This statement is absolutely ludicrous! Every person living on the land affected has moved. Steele Bell's home site is directly in the path of construction and he had to move.

Mr. Kunkle of Evergreen Acres decided that his horse farm would be inoperable with the new construction and he moved.

Mr. Chaplan also decided he could not co-exist with the new construction and has moved.

Mrs. Fasenmyer's house is directly in the path of new construction and will be demolished.

George Grguric's house is within 100 feet of the new construction and he has sold out to Norfolk Southern and is planning to move.

4. "Restore approximately 86 acres to natural pre-build condition."

Due to the extensive cut and fill construction requirements, it is not reasonable to think that a significant amount of land would be restored to pre-build construction, therefore, all 109 acres should be considered to be consumed by the Proposed Action not just 23 acres for the rail bed.

ES 6.5 Energy Use

Norfolk Southern boasts 702.9 gross ton-mile (GTM)/gallon for rail transport as opposed to 140 GTM/gallon by truck. I assume this means one gallon of fuel will move 702.9 tons of coal one mile by rail and only 140 tons by truck.

Using these figures, let's calculate the amount of fuel required to deliver a ton of coal from source to destination for both rail and truck.

RAIL:

$702.9 \text{ divided by } 14,040 \text{ (tons per train)} = .05 \text{ mpg or } 20 \text{ gallon per mile}$

$20 \text{ gallon per mile} \times 341 \text{ miles} = 6,820 \text{ gallons per trip}$

$6,820 \text{ (gallons per trip)} \text{ divided by } 14,040 \text{ (tons per trip)} = .49 \text{ gallon of fuel consumed per ton of coal delivered.}$

TRUCK:

$70 \text{ (average mile trip)} \text{ divided by } 6 \text{ miles per gallon divided by } 23 \text{ (tons per trip)} = .5 \text{ gallon of fuel consumed per ton of coal delivered.}$

As the calculations bare out, given the current hauling distances, there is virtually no advantage in fuel use of rail deliveries over truck deliveries. Fuel use for rail deliveries being .49 per ton of coal delivered compared to .5 gallon for trucks shows the difference to be negligible. Furthermore, trucks must comply to increasing emission standards which would give them an advantage over rail.

Admittedly, these calculations are based on coal deliveries being split one half by rail at 341 miles per trip and one half by truck at 70 miles per trip, but this is the current mix and to assume anything else would be pure speculation.

Norfolk Southern is advocating increasing rail deliveries of low sulphur Pittsburgh Seam coal and decreasing truck deliveries of local coal. Obviously, for the short term, better air quality of power plant emissions and, of course, better for Norfolk Southern.

However, for the long term, wouldn't it make more sense to mix the local coal with the Pittsburgh Seam rather than deplete the Pittsburgh Seam resources and end up with only high sulphur coal? Not to mention the economic catastrophe that would be created by closing yet more mines with its rippling effect to all sorts of supporting industries such as trucking, tire shops, truck maintenance shops, fuel stations, mine service shops and miners themselves to name a few.

## CHAPTER 1 PROPOSED ACTION & PURPOSE AND NEED

### 1.1 DESCRIPTION OF THE PROPOSED AND RELATED ACTIONS

#### 1.1.3 New Rail Traffic

Norfolk Southern begins by stating it intends to operate five 130-car coal units of 14,040 tons per week. This calculates out to 3.65 million tons annually, meanwhile the current Keystone rail delivery requirements are 2.3 million tons annually. Is this wishful thinking on their part or an opportunity for insider trading?

Norfolk Southern does go on to state, however, that 164 trips annually (or 3.15 trips per week) over the Proposed Route would satisfy the current rail delivery requirement as opposed to 213 (or 4.1 trips per week) over the existing route.

Norfolk Southern then goes on to state it would easily handle anticipated increased demands by providing 7 trips per week or 5.1 million tons per year ( $7 \times 14,040 \times 52$ ). Considering the total annual coal consumption of Keystone is only 4.5 million tons, I think their expectations are a bit over zealous. Also, I thought monopolies were illegal.

Furthermore, if they are willing to provide 7 trips per week over the new route, why not increase the Northern Route trips from 4 to 7 trips per week? This would give them a 70% increase in annual deliveries and eliminate the unwanted disruption to our community.

#### 1.1.4 Purpose And Need For The Proposed Action

Norfolk Southern lists as one of the reasons for needing the Proposed Action is to accommodate the anticipated increased truck to rail diversion of coal deliveries.

This statement is totally unsubstantiated and is purely speculation on Norfolk Southern's part. As pointed out earlier, there is absolutely no environmental advantage of rail deliveries over truck deliveries. Given the current hauling distances, approximately .5 gallon of fuel is required to deliver a ton of coal from source to destination by each. I am also reminded of the old adage "Never put all your eggs in one basket", especially with the recent interjection of terroristic threat. Therefore, this anticipated diversion should not be considered as a need for the Proposed Action.

As for Norfolk Southern's other reasons (save time, crews and locomotives), while they are all genuine advantages over the northern route, who is the greater beneficiary, the environment or Norfolk Southern?

If the Proposed Action is implemented, will Norfolk Southern reduce its hauling rates, I think not. Will we see a reduction in our electric bill, I think not. Will Norfolk Southern experience increased profits, I think so.

Fact is, given the current mix of rail to truck deliveries, the Northern Route is adequate, and by anyone's standards, anything more than adequate is wasteful. To impose unnecessary disruption to our community so that Norfolk Southern can achieve a better bottom line does not seem reasonable.

### CHAPTER 3 EXISTING ENVIRONMENT

#### 3.6 ENERGY

##### 3.6.2 Energy Information

##### Existing Rail Operations

This paragraph states that approximately 14,500 gallons of diesel fuel is required to deliver 2.3 million tons of coal annually over the Northern Route. This is an incredible feat. This means that each gallon of diesel fuel delivers 158.6 tons of coal ( $2,300,000 / 14,500 = 158.6$ ). All the more reason to retain the Northern Route since one gallon of diesel fuel can only deliver two tons via the Proposed Action Southern Route.

### CHAPTER 4 POTENTIAL ENVIRONMENTAL IMPACTS

#### 4.1 LAND USE

##### 4.1.2 Land Use Impacts

This section states that the construction and operation of the Proposed Action will not interfere with normal functioning of adjacent land uses or be incompatible with local land use plans or ordinances.

I reiterate the intended subdivision plans for the Olliver Farm and the intended development plans for the Pomposini tract. Also with respect to adjacent land use, the Proposed Action boundaries are within 20 feet of Steve and Mary Suwinski's property and within 200 feet of their house, but because they are not directly in the path, they have no mitigation rights. I certainly think this constitutes a negative impact to adjacent land use.

## 4.2 SOCIOECONOMICS

### 4.2.2 Socioeconomics Impacts

This section does not give justice to the potential economic disaster awaiting our community should Norfolk Southern's anticipated diversion of truck to rail deliveries occurs.

1. 2  
1. D  
Currently 2.2 million tons of central Pennsylvania coal are delivered by truck to the Keystone Power Plant. Considering a conservative selling price of \$25 per ton, this generates 57.5 million dollars of revenue to the central PA communities. At \$4 per ton hauling rate, nearly 9 million in revenues is associated with the trucking industry alone.

This 57.5 million dollars goes a long way to insuring a stable economic environment for central Pennsylvania. The total revenues are instrumental in supporting not only mine operators and their employees but related mine service industries, heavy equipment industry and the numerous ripple effect industries spanning the gamut from tire shops to tax preparers.

Once again the statement "no residential or commercial displacements would be caused by the Proposed Action". This statement is totally untrue and shows a blatant irresponsible attitude on the part of Norfolk Southern. To date, 4 in-the-path occupants have been displaced and at least 2 others are contemplating moving.

### 4.6.2 Energy Savings in Rail Operation

This section contains the statement that energy savings of one kilowatt per ton of coal would be experienced if the Proposed Action is implemented.

There is no supporting data documenting the validity of this statement.

### 4.6.3 Energy Savings in Truck to Rail Diversions

First of all, this anticipated diversion is pure speculation on Norfolk Southern's part. Secondly, they are comparing apples and oranges. Norfolk Southern boasts transportation efficiencies, per mile, five times greater by rail than by truck. Per mile is the keyword. You cannot make per mile comparisons when the average truck round trip is 70 miles and the train is 341 miles.

The true comparison would be, how much fuel is required to deliver 1 million tons of coal from source to destination.

By Truck:

70 miles x 7,143 gallons fuel per mile per million tons = 500,010 gallons of fuel

By Rail:

341 miles x 1,423 gallons fuel per mile per million tons = 485,243 gallons of fuel

Actual fuel savings: 14,767 gallons of fuel

As you can see the actual fuel savings is more like 3% not 80% as Norfolk Southern would have you believe.

#### 4.6.4 Coal Use

This entire section is devoted to advantages derived should the speculated increase in Pittsburgh Seam coal consumption and decrease in Central Pennsylvania coal consumption occur.

Once again, this is pure speculation on the part of Norfolk Southern and demonstrates irresponsible actions in using unverifiable statements to show favorable conditions on their behalf.

It is also worthy of mention at this point to set the record straight on the supposedly superiority of rail delivered Pittsburgh Seam coal compared to truck delivered Central Pennsylvania coal.

First of all, there is a considerable amount of Pittsburgh Seam coal being delivered by truck. Secondly, all coal delivered to the Keystone Power Plant must meet stringent analysis criteria and, believe it or not, there is a considerable amount of truck delivered coal with a lower ash and higher BTU rating than the Pittsburgh Seam coal.

### 4.8 AIR QUALITY

#### 4.8.3 Operations Impact

This section contains the statement that, should the Proposed Action be implemented, an annual combined truck and rail fuel savings of nearly 300,000 gallon would be achieved.

There is no supporting data showing how this figure was arrived at, therefore, it should not be used to show favorable conditions for Norfolk Southern.

Francis L. Olliver  
95 Rose Road  
Saltsburg, PA 15681

December 17, 2002

Surface Transportation Board  
Case Control Unit  
1925 K Street, N.W. Suite 700  
Washington, D.C. 20423

Attn: Ms. Phillis Johnson-Ball

Re: Comments to Environmental Assessment  
Finance Docket No. 33928

Dear Ms. Phillis Johnson-Ball:

Enclosed please find my comments to three specific areas of the above referenced Environmental Assessment.

ES 6.1 Land Use and Recreation

ES 6.5 Energy Use

1.1.3 New Rail Traffic

Sincerely,



Francis L. Olliver

## ES 6.1 Land Use and Recreation

There are several grossly incorrect statements in this section.

1. Norfolk Southern states "there is no Prime Agricultural Farmland present in the area of the Proposed Action".

I would like to know where Norfolk Southern gets its definition of Prime Agricultural Farmland? Our vegetable farm has.....

. extensive underground drain tile to eliminate wet spots.

buried 3" PVC water line with strategically placed outlets to accommodate irrigation throughout the farm.

a one acre pond to supply water for the irrigation system.

. contour strips to minimize soil erosion.

. deer deterrent fencing enclosing the entire crop acreage.

There are only two other farms in Indiana County with such amenities. Additionally, the letter from USDA to Chris Caperton, Public Affairs Management, dated March 22, 2001 states that Prime Farmland is involved and that if Federal funding is used, the regulations of the Farmland Protection Policy Act of 1981 must be met.

The Evergreen Horse Farm also has numerous amenities including a two acre pond, large oval track for sulky horse training, fencing and cross fencing, large stable barn and other smaller stable buildings, all of which would qualify it as Prime Agricultural Farmland.

2. "The Proposed Action would not conflict with any land use plans or zoning ordinances at the local, county or state level."

Filed in the Indiana County Courthouse is a plot plan for our farm which we intended to implement upon retirement. The Proposed Action totally renders this option impractical since the construction path dissects several of the proposed plots.

3. "No residents would be displaced by the Proposed Action."

This statement is absolutely ludicrous!

Steele Bell's home site is directly in the path of construction and he had to move.

Mr. Kunkle of Evergreen Acres decided that his horse farm would be inoperable with the new construction and he moved.

Mr. Chapman also decided he could not co-exist with the new construction and has moved.

Mrs. Fasenmyer's house is directly in the path of new construction and will be demolished.

George Grguric's house is within 100 feet of the new construction and he has sold out to Norfolk Southern and is planning to move.



## ES 6.5 Energy Use

Norfolk Southern boasts 702.9 gross ton-mile (GTM)/gallon for rail transport as opposed to 140 GTM/gallon by truck. I assume this means one gallon of fuel will move 702.9 tons of coal one mile by rail and only 140 tons by truck.

Using these figures, let's calculate the amount of fuel required to deliver a ton of coal from source to destination for both rail and truck.

### RAIL:

702.9 divided by 14,040 (tons per train) = .05 mpg or 20 gallon per mile

20 gallon per mile X 341 miles = 6,820 gallons per trip

6,820 (gallon per trip) divided by 14,040 (tons per trip) = .49 gallon of fuel consumed per ton of coal delivered.

### TRUCK:

70 (average mile trip) divided by 6 miles per gallon divided by 23 (tons per trip) = .5 gallon of fuel consumed per ton of coal delivered.

As the calculations bare out, given the current hauling distances, there is virtually no advantage in fuel use of rail deliveries over truck deliveries. Fuel use for rail deliveries being .49 gallon per ton of coal delivered compared to .5 gallon for trucks shows the difference to be negligible. Furthermore, trucks must comply to increasing emission standards which would give them an advantage over rail.

Admittedly, these calculations are based on coal deliveries being split one half by rail at 341 miles per trip and one half by truck at 70 miles per trip, but this is the current mix and to assume anything else would be pure speculation.

Norfolk Southern is advocating increasing rail deliveries of low sulfur Pittsburgh Seam coal and decreasing truck deliveries of local coal. Obviously, for the short term, better air quality of power plant emissions and, of course, better for Norfolk Southern.

However, for the long term, wouldn't it make more sense to mix the local coal with the Pittsburgh Seam rather than deplete the Pittsburgh Seam resources and end up with only high sulfur coal? Not to mention the economic catastrophe that would be created by closing yet more mines with its rippling effect to all sorts of supporting industries such as trucking, tire shops, truck maintenance shops, fuel stations, mine service shops and miners themselves to name a few.

### 1.1.3 New Rail Traffic

Norfolk Southern begins by stating it intends to operate five 130-car coal units of 14,040 tons per week. This calculates out to 3.65 million tons annually, meanwhile the current Keystone rail delivery requirements are 2.3 million tons annually. Is this wishful thinking on their part or an opportunity for insider trading?

Norfolk Southern does go on to state, however, that 164 trips annually (or 3.15 trips per week) over the Proposed Route would satisfy the current rail delivery requirement as opposed to 213 (or 4.1 trips per week) over the existing route.

Norfolk Southern then goes on to state it could easily handle anticipated increased demands by providing 7 trips per week or 5.1 million tons per year ( $7 \times 14,040 \times 52$ ). Considering the total annual coal consumption of Keystone is only 4.5 million tons, I think their expectations are a bit over zealous. Also, I thought monopolies were illegal.

Furthermore, if they are willing to provide 7 trips per week over the new route, why not increase the Northern Route trips from 4.1 to 7 trips per week? This would give them a 70% increase in annual deliveries and eliminate the cost of building a Southern Route.

**Horst E. Kunig, Ph. D.**, 325 Kunig Road, P. O. Box 192, Saltsburg, PA 15681, USA  
Tel 724-639-3657, Fax 724-639-9681, e-mail [kunig@kiski.net](mailto:kunig@kiski.net)

March 14, 2003

RECEIVED  
MAR 19 2003  
U.S. DEPARTMENT OF  
TRANSPORTATION

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N. W.  
Washington, DC 20423-0001

Re: STB Finance Document, NO. 33928, Norfolk Southern Corporation, Application for  
Construction and Operation of new Rail Line in Indiana County, Pennsylvania

Dear Secretary Williams:

Enclosed is a clarification on the Petition and Motion submitted March 3, 2003.

One original and ten copies of the document, a certificate of mailing, and a service list are also enclosed.

Please contact me if you have further questions.

Sincerely,

*H. Kunig*

President  
Kunig, Inc.

ENTERED  
Office of Proceedings

MAR 19 2003

enclosures

Part of  
Public Record

Cc Constance A. Sadler  
Counsel for Norfolk Southern Corporation  
And Norfolk Southern Railway Company  
Sidley and Austin  
1501 K Street, N. W.  
Washington, DC 20005

SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

Finance Docket No 33928

Norfolk Southern Corporation and  
Norfolk Southern Railway Company

RECEIVED  
MAR 19 2002  
MAIL ROOM  
U.S. DEPT. OF TRANSPORTATION

---

CLARIFICATION  
PETITION AND MOTION DISMISS APPLICATION AT FD 33928  
PETITION AND MOTION TO DISMISS ENVIRONMENTAL ASSESSMENT  
PETITION TO REOPEN SCOPING PROCESS

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The inadvertent use of the word "million" on page 5 of the Petition and Motion may be misleading and should be stricken. For purpose of clarification the appendix: fuel consumption calculations is added below.

**Appendix: fuel consumption calculations**

fuel consumption (measured in gallons) equals

fuel efficiency (measured in gallons/mile and ton)  
multiplied by miles coal is transported  
multiplied by tons of coal transported

fuel consumption for truck delivery equals

7,140 gallons/mile and 1 million ton times 51.58 miles times 2.3 million tons or  
847,047 gallons,

fuel consumption for rail delivery over the Northern Route equals

1,425 gallons/mile and 1 million ton times 443 miles times 2.3 million tons or  
1,451,933 gallons,

fuel consumption for rail delivery over the proposed Southern Route equals

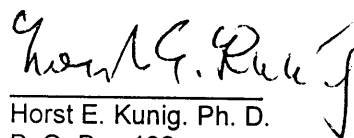
1,425 gallons/mile and 1 million ton times 341 miles times 2.3 million tons or  
1,117,628 gallons.

excess fuel consumption for rail delivery versus truck delivery of 2.3 million tons is

604,886 gallons (1,451,933 - 847,047) over the Northern Route  
270,581 gallons (1,117,628 - 847,047) over the proposed Southern Route

excess fuel consumption for a truck-to-rail diversion of 1 million ton of coal from 2.3 million tons to  
3.3 million tons is calculated from the above formula as 388,215 gallons.

Respectfully submitted by



Horst E. Kunig, Ph. D.  
P. O. Box 192  
Saltsburg, PA 15681-019

Dated: March 14, 2003

### Certificate of Service

The undersigned hereby certifies to have caused to send the original and 10 copies of this Petition to The Honorable Vernon A. Williams, Secretary of the Surface Transportation, one copy to Norfolk Southern Railroad Company, Attention Constance Sadler, Esquire on March 14, 2003 by First Class Mail, and additional copies to the following persons:

#### List of Distribution

The Honorable Ed Rendell  
Governor  
Commonwealth of Pennsylvania  
225 Main Capitol Building  
Harrisburg, PA 15120

The Honorable Mike Fisher  
Attorney General  
16 th Floor, Strawberry Square  
Harrisburg, PA 17120

The Honorable Glen R. Thomas  
Chairman, Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

Secretary Department of Transportation  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Conemaugh Township Supervisors  
RD # 1 Box 206  
Saltsburg, PA 15681

Young Township Supervisors  
1412 Park Drive  
Clarksburg, PA 15725

The Honorable Samuel H. Smith  
House Box 202020  
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The Honorable Jeff Coleman  
House Box 202020  
Harrisburg, PA 117120-2020

The Honorable Richard A. Geist  
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Harrisburg, PA 117120-2020

The Honorable Donald C. White  
618 Philadelphia Street  
Indiana, PA 15701

The Honorable Bill Shuster  
645 Philadelphia Street  
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Indiana County Commissioners  
Court House  
Indiana, PA 15701

Bret Baronak, Chief Planner  
Indiana County Office of Planning  
And Development  
Court House Annex  
810 Water Street  
Indiana, PA 15701

Flack  
Southwest Pennsylvania Commission  
Regional Enterprise Tower  
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Pittsburgh, PA 15219-1819

The Honorable John P. Murtha  
US House of Representatives  
Washington, D. C. 20510

The Honorable Mike Doyle  
US House of Representatives  
133 Cannon House Office Building  
Washington, D. C. 20515

The Honorable Arlen Specter  
711 Hart Building  
Washington, D. C. 20510

The Honorable Rick Santorum  
120 Russell Building  
Washington, D. C. 20510

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127 Lexington Ave., Suite 100  
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---

March 3, 2003

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N. W.  
Washington, DC 20423-0001

Re: STB Finance Document, NO. 33928, Norfolk Southern Corporation, Application for  
Construction and Operation of new Rail Line in Indiana County, Pennsylvania

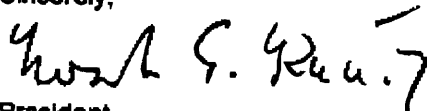
Dear Secretary Williams:

Enclosed is a document, entitled Petition and Motion for Sanctions and Request for Relief.

One original and ten copies of the document, a certificate of mailing, and a service list are enclosed.

Please contact me if you have further questions.

Sincerely,



President  
Kunig, Inc.

enclosures

Cc Constance A. Sadler  
Counsel for Norfolk Southern Corporation  
And Norfolk Southern Railway Company  
Sidley and Austin  
1501 K Street, N. W.  
Washington, DC 20005

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

**Finance Docket No 33928**

**Norfolk Southern Corporation and  
Norfolk Southern Railway Company**

---

**PETITION AND MOTION DISMISS APPLICATION AT FD 33928  
PETITION AND MOTION TO DISMISS ENVIRONMENTAL ASSESSMENT  
PETITION TO REOPEN SCOPING PROCESS**

---

**Background**

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) was granted a protective order under 49 CFR 1104.14 on February 2, 2001. Subsequently on December 27, 2001 NS filed an application with the Surface Transportation Board (STB) for issue of a certificate of public convenience and necessity authorizing construction and operation of a rail line in Indiana County, PA, pursuant to 49 U.S.C. 19901. Thereafter STB's Section on Environmental Analysis (SEA) issued an Environmental Analysis (EA).

Throughout its application for issuance of a certificate of public convenience and necessity NS claims that the proposed new rail construction (Southern Route) will have greater capacity than an existing route (Northern Route). The Southern Route would permit transportation of coal more efficiently, effectively and, therefore, NS concludes the Southern Route to be "an environmentally superior alternative" to the Northern Route. For all these reasons, NS urges the Board to issue a certificate of public convenience and necessity.

49 U.S.C. 19901 (c) is the applicable rule for issuance of a certificate of public convenience and necessity. Under the standards set forth in 49 U.S.C. 19901 (c), "The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with public convenience and necessity". This motion provides compelling evidence that the activities NS proposes are indeed inconsistent with public interest, convenience, and necessity and, therefore, issuance of said certificate should be denied.

**Presentation of General Arguments**

**1. Authority of SEA to grant EA**

Under 49 CFR 1105.6:

- (a) "Environmental Impact Statements (EIS) will normally be prepared for rail construction proposals other than those described in paragraph (b) (1) of this section.
- (b) Environmental Assessment will normally be prepared for the following proposed actions:
  - (1) Construction of connecting track within existing rail rights-of-way, or on land owned by the connecting railroads."

In its application for certificate of public convenience and necessity on page 2, NS states that "by the time this proceeding has been completed, NS anticipates that "it will have acquired through options to purchase, purchase, or otherwise, all of the property required to construct the

Salisbury connection". As NS did not (emphasis added) own the land between the connecting railroads at the time of filing the application of certificate of public convenience and necessity an EIS is mandatory. SEA, thus, exceeded authority by granting NS an EA in contravention of 49 CFR 1105.6 (b) (1) to escape an EIS.

It is noted here, that NS initiated all land acquisition through eminent domain procedures by filing a Notice of Taking. As argued by Kunig in his Petition to STB, dated March 23, 2001 under 15 Pa. C.S.A. § 1511 (a) and (c) NS is not entitled to exercise the power of eminent domain prior to issuance of certificate of public convenience and necessity by STB. (emphasis added). NS's premature actions suggest a pre-emptive maneuver to circumvent an EIS, as required under 49 CFR 1105.6 (b) (1).

NS claims exemption from eminent domain requirements, as subsection (c) does not mention railroads. NS misreads the law, as subsection (a) does mention railroads. Lawlessness would ensue if NS's interpretation of the law would be correct. If STB denies certificate of public convenience and necessity, as it should under this motion, then NS would have acquired property for no cause. Implicitly using its deep pockets, counsel for NS stated in a Township meeting that: "ultimately a judge would have to determine the issue". State Representative Jeff Coleman organized the meeting at the Conemaugh Township at the outrage of his constituents on the NS project. It did not come about, as NS claims, at NS's kindness to educate the public. In the first meeting NS usurped the agenda with propaganda. So outraged was the public that Representative Coleman commenced a second meeting. At this Petitioner's request Representative Coleman set an agenda, where the public would ask questions and NS would reply. Again, the public learnt nothing in the second meeting, as NS refused to answer all substantive questions, citing the protective order. Subsequently, NS's failure to respond lead to the Petition with 179 signatures in opposition to the project. Similarly, the deep pockets in the legal prosecution of eminent domain matters was obvious, when landowners eventually transferred ownership to NS.

Additionally, 49 CFR 1105.6 (d) provides discretion to the Board to modify requirement for preparation of EA or EIS. SEA does not have this power of discretion. Absent a Board decision, NS cannot invoke 49 CFR 1105.6 (d) and must therefore prepare an EIS under 49 CFR 1105.6 (b) (1).

In view of the foregoing SEA's EA is inappropriate and should be replaced by an EIS, which in particular should address the expected pollution in the city of Clarksburg, where the Southern Route divides the city into two halves and the business relationships between NS and the coal supplier, between the Keystone Plant and the coal supplier, to exclude conflict of interest.

## 2. protective order

NS requested in its application for protective order

"that the Board maintain as confidential commercially sensitive materials pertaining to the construction and operation of the rail line. NS asserts that some of the information that must be included in the application is highly confidential, proprietary, or commercially sensitive information developed and protected against public disclosure, including shipper-specific material, such as traffic data, contract rates, and volume".

Relying on protective order, NS's application for certificate of public convenience and necessity, filed on December 27, 2001, comprises two versions; a highly confidential version and a public version. In the public version NS failed to identify the volume of coal it presently ships and the volume of coal shipped by truck.



However, the SEA prepared EA discloses at 3.6.2 page 3-20, that NS presently transports 2.3 million tons per year while 2.2 million tons per year are shipped by truck to satisfy the total Keystone Power Plant requirements of 4.5 million tons per year. This admission not only is a breach of the protective order but also constitutes an *ex-parte* communication.

3. *ex-parte* communication:

Under 49 CFR 1104.14 NS is required to submit Designated Material in a package clearly marked on the outside "Confidential Materials Subject to Protective Order" whereupon such Designated Material shall be kept confidential by the Board and not be placed in public document. The appearance of confidential information in SEA's EA report is a clear indication that NS has failed to adhere to the conditions imposed by the protective order. The non-confidential transmittal of said information to SEA is a breach of the protective order and constitutes an *ex-parte* communication of exceptional clarity, which is prohibited under 49 CFR 1102.2(c)(1) and (2):

(c) Prohibitions

- (1) No counsel, party, agent of party, person who intercedes in any on-the-record proceeding shall engage in any *ex-parte* communication concerning the merits of the proceeding with any Board Member, hearing officer, joint board member, employee board member or employee of the Board who participates, or may reasonably be expected to participate, in the decision in the proceeding.
- (2) No Board Member, hearing officer, joint board member, employee board member, or employee of the Board, who participates, or is reasonably expected to participate, in the decision in an on-the-record proceeding shall invite or knowingly entertain any *ex-parte* communication concerning the merits of a proceeding or engage in any such communication to any party, counsel, agent or any party or person reasonably expected to transmit the communication to a party or party's agent.

SEA cannot serve as conduit to the Board to transmit information, which NS is required to reveal in order to satisfy the requirements of the protective order. The *ex-parte* communication, regarding the volume of coal shipment, clearly reveals an infringement on the quality of the human environment or the conservation of energy resources. This reason alone should invalidate the EA. It should have compelled SEA to revoke the EA and re-institute an EIS under 49 CFR 1105.6 (d): "For actions generally requiring an EA, The Board may prepare a full EIS where the probability of significant impacts from the particular proposal is high enough to warrant an EIS".

While information provided in NS's application for certificate of public convenience and necessity prevented this Petitioner and the general public from meaningful examination of NS claims in support of its application, the additional revelations of the EA now permit thorough scrutiny and, as a result, the conclusion that NS application is indeed inconsistent with public convenience and necessity.

**Demonstration of Inconsistency**

The Board usually employs a three-part test to determine public convenience and necessity (see Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000). Here the Board stated: "In reviewing construction proposals, we examine whether: (1) the applicant is financially fit to undertake the construction and provide service; (2) there is a public demand or need for the proposed service; and (3) the construction project is in the public interest and will not unduly harm existing services." Id. at 15-16; Tongue River Railroad Co.-Const. & Oper. STB 809,826 (1996).

1. financial viability:

In support of the financial viability on page 12 of the application for certificate of public convenience and necessity, NS recites the Board's decision (see Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000). Accordingly, The Board notes on page 5, paragraph 3: "the purpose of STB's test of financial viability is not to protect the carrier. Rather it is to protect existing shippers".

To prove financial fitness, NS states on page 13: "NS will finance the construction of the project out of its current capital budget, and shall recover the costs of the construction through revenues received pursuant to an existing contract covering deliveries to the only current customer on the proposed line" (emphasis added). The status of being the only current customer is wholly irrelevant in the determination of financial viability. If NS were the only shipper, then NS would pass the financial viability test, as shown in Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000. Here the Board stated on page 5, paragraph 3: "Because a new railroad is without existing shippers, the financial fitness test has little, if any bearing on the construction". But NS is not without existing shippers who are indeed adversely affected. Substituting customer for shipper is misleading in the extreme in view of NS's recitations above.

Financial viability must take into account existing shippers. NS's project should be judged in light of the following evidence. Prior to 1995 the Keystone Power Plant received all 4.5 million tons of its annual coal requirements by truck shipment. NS began shipping coal by 1995. The SEA prepared EA discloses ex-parte at 3.6.2 page 3-20, that presently NS transports 2.3 million tons per year while 2.2 million tons per year are still shipped by truck to satisfy the total Keystone Power Plant requirements of 4.5 million tons per year. Only after issuance of SEA's EA is it possible to determine that NS actually had acquired 51 % of the shipping rights (2.3 million tons over 4.5 million tons) at the expense of diminished coal shipments by trucks from 100 % to 49 %. As a result, existing shippers, transporting coal by truck, were adversely impacted in the extreme. Many coal mines did shut down between 1995 and 2000, leaving shippers stranded.

It now appears, that NS is using its power of the 51 % majority shipping rights to further raise its stake in the transportation of coal. If allowed to raise NS's shipments by an additional 1 million ton, for which it is seeking approval from STB, it then would control 73 % (3.3 million tons over 4.5 million tons) of all coal shipment. As the New Southern Route can actually accommodate more than additional 1 million tons coal shipment, it is transparent, that NS would want to usurp the entire coal shipments to the power plant. On page 14 of the application for public convenience and necessity NS states: "With current access limited to the Northern Route, NS does not--and cannot--provide the Keystone Plant with its total coal supply needs, and so the remainder is sourced from mines via trucks". However, with the construction of the Southern Route, NS can indeed supply all power plant needs and, if it does, existing shippers would have no recourse and be irreparably harmed. Thus, NS does not pass the financial fitness test, as it is harming existing services. NS's activities are inconsistent with public convenience and necessity. Its application for certificate of public convenience should be rejected.

Further, NS in a foot note on its application for certificate of public convenience and necessity on page 13 reveals that: "NS is seeking partial public funding through federal funds allocated by Congress for this project. (The amount allocated is \$ 10 million). The federal funds for the Keystone Project have been ear-marked under the Congestion Mitigation Air Quality Improvement program (CMAQ)". Under EPA420-F-99-003 of February 1999 strategies to reduce vehicle miles traveled (VMT) and reduce congestion in order to make travel less polluting are eligible for CMAQ funding. As shown in the discussion of the other two criteria, public demand or need for proposed service, and public interest below, NS is not entitled to CMAQ funds, which may significantly affect financial fitness.

## 2. Public Demand or Need for Service:

In the application for certificate of public convenience and necessity NS claims on page 13 a clear public demand and need for service. In support NS cites track and yard expansion improvements, public and environmental benefits because of the movement of 30 % more coal per trip over a significantly shorter distance, and diversion of truck-to-rail transport of coal.

In examining these claims we look for guidance from the Board in Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000. Here the Board had to evaluate Great Salt Lake and Southern Railroad's contention that, "based on the nuclear power industry claims, there is an urgent need to build and operate its own transportation and storage facility for interim storage of spent nuclear fuel, because it is unlikely that Department of Transportation would develop a permanent repository in the near future". The Board concurred. In contrast, the Keystone Power Plant has been served adequately in the past, is still being adequately served at present by other shippers, and, in fact, can be adequately served by existing shippers without participation by NS. There is no urgent need for a new rail line. Thus NS's project is inconsistent with public demand or need of service.

Track and yard expansion is a capital investment, designed to improve economy of an operation. With regard to the economics of a business the Board stated in Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000: "The purpose of the test of financial ability of the applicant to construct the proposed rail line is not to protect the carrier or its investors. Rather it is to protect existing shippers from a carrier's proposed action without detriment to either service or rates" and "we leave it to the financial market itself to ultimately determine if the project is economically viable". Therefore track and yard expansions, being economic issues, are irrelevant in the proof of public demand or need of service.

We now turn our attention to NS's claim of environmental benefits by rail shipments in general and by diversion of truck-to-rail shipments in particular. According to SEA's EA on appendix D: NS claims fuel savings on account of a greater fuel mileage (7,140 gallons per mile and ton for truck delivery versus 1,425 gallons per mile and ton per rail car) - emphasis added. NS goes on to purport that these savings would result in environmental benefits and make the new Southern Route the environmentally superior route. NS confuses fuel mileage with fuel consumption. Coal is not transported by fuel mileage. Instead it is moved by the fuel consumed and burnt to provide the necessary thermal energy to move a load (characterized by its weight) over a distance. In the case of rail delivery that distance is 8.6 times longer than the distance by truck delivery while fuel mileage by truck is only 5 times that of rail. Any benefits, derived from a larger fuel mileage by rail is completely negated by the longer distance rail cars must travel.

More specifically, fuel consumption can be determined by multiplying the fuel mileage from above by the amount of coal to be shipped and the distance the coal must be shipped. We now determine fuel consumption of 2.3 million tons of coal for truck delivery over 51.58 miles (41.26 miles from base to power plant plus 10.32 miles from home to base, see application for certificate of public convenience and necessity on page 23), for rail delivery over the Northern Route of 443 miles, the Southern Route of 341 miles, and a hypothetical rail route of 258 miles. Fuel consumption is 0.847,048 million gallons for truck delivery, 1,451,933 million gallons for rail delivery over the Northern Route, 1,117,828 million gallons over the Southern Route, and 0.845,695 million gallons over the hypothetical route.

Fuel consumption for delivery over the Northern Route is 1.71 times larger than by truck, for delivery over the new Southern Route is 1.32 times larger than by truck. Rail delivery simply cannot compete with truck delivery. Truck delivery is the environmentally superior route. A new rail line, the hypothetical line, would have to be shortened to at least 258 miles to be competitive with truck delivery. Only then would rail delivery become competitive with truck delivery and, as a consequence, be environmentally superior.

As rail delivery is environmentally far inferior to truck delivery in the instant case, Truck-to-rail diversion would provide no benefits. In fact, a diversion of 1 million tons of coal from 2.3 million tons to 3.3 million tons shipped over the proposed Southern Route would cause a net increase in fuel consumption by 117,593 gallons. Truck-to-rail diversion does not provide benefits to the public in principal.

Claiming fuel efficiency as the criterion for energy saving in truck-to-rail diversion is fatally flawed, as it is a flagrant violation of the physics law of conservation of energy. Said law is not subject to legal interpretation. The Board would invite significant legal challenge, supported by the engineering profession as a matter of principle, if it would allow NS's misleading actions to become the norm. Certificate of public convenience and necessity should be denied.

Following is an investigation of the requirements for being eligible to receive CMAQ funds under the Congestion Mitigation Air Quality Improvement program. The criteria used to determine eligibility is vehicle miles traveled (VMT). VMT can be calculated by the formula volume coal shipped, divided by 108 tons/rail car and multiplied by the distance traveled. If NS fails these criteria, then it is not entitled to receive funds. By default it would confirm that NS's Keystone project is environmentally unsound. We now determine VMT for shipment of 2.3 million tons of coal per truck, over the Northern Route, over the Southern Route, and a hypothetical route of 242 miles. VMT is 5,158,000 for truck delivery, 9,434,259 miles for rail delivery over the Northern Route, 7,262,037 miles over the Southern Route and 5,153,703 miles over the hypothetical route.

VMT for delivery over the Northern Route is 1.83 times larger than by truck, for delivery over the new Southern Route is 1.4 times larger than by truck. Rail delivery simply cannot compete with truck delivery. Truck delivery is the environmentally superior route. A new rail, the hypothetical one, line would have to be shortened to at least 242 miles to be competitive with truck delivery and, as a consequence to be environmentally superior. VMT considerations also confirm that NS's Keystone project is environmentally unsound and inconsistent with public convenience and necessity.

NS's activities to construct the Southern Route fails all three tests, financial fitness, public demand or need, and public interest, the Board employs to determine public convenience and necessity. NS application should be denied

#### **Comparison of the Northern Route with the Proposed New Southern Route**

In its application for certificate of public convenience and necessity NS relies heavily on the comparison of the characteristics of the Northern Route with the proposed Southern Route instead of providing evidence genuine to the Southern Route as required under the three point test.

We demonstrated already that there is no need and, as a consequence, no demand for NS's service, because the power plant can be adequately served even without NS shipping any coal. Additionally, the Keystone Plant may be at the end of the expected lifetime, which would favor the flexibility accorded by truck delivery.

We also demonstrated that there is no public interest, because the construction project would unduly harm existing shippers, particularly in a truck-to-coal diversion.

Therefore, we are left to discuss the benefits, if any, by shipping the same amount of coal over the proposed new Southern Route, as is presently shipped over the Northern Route. NS infers environmental benefits, based on reduced fuel consumption on account of a shorter length of the Southern Route versus the Northern Route. NS's argument is flawed in the instant case, where truck delivery must be taken into account.

Given the irrevocable and unchangeable fact in the instant case, that rail shipments occur over a much larger distance (341 miles) than truck shipments (51.58 miles), true benefits to the public would accrue only if coal shipment by rail is abandoned entirely. Thus, any reduction of fuel consumption over the shortened new Southern Route does not benefit the public. To the contrary, NS is the only beneficiary.

We now derive at objective criteria to quantitatively ascertain when benefits accrue to the public in a new rail line construction in face of competition from other shippers. We already determined that NS would have to reduce track mileage to at least 258 miles in order to stay competitive with truck delivery. Conversely, trucks would lose their competitive edge, when coal must be hauled from distances greater than 72.6 miles. The criteria to determine benefits of a proposed new operation versus an existing operation should read:

"Benefits accrue to the public, if fuel efficiency multiplied by volume of transported goods multiplied by distance traveled for a new operation is less than fuel efficiency multiplied by volume of transported goods multiplied by distance travel for an existing operation".

This Petitioner urges the Board not only to apply this criterion to the instant case but also to apply it nationwide, because it would contribute to best use of existing resources in a particular area. For example, the resources of Central Pennsylvania would be used in the aging Keystone Plant. West Virginia coal should be used at a power plant to be constructed near the source of coal. Therefore, this Petitioner also suggests to the Board to incorporate a feasibility study of this kind into an Environmental Analysis Study, which could conceivably convince NS to invest into the construction of a new power plant rather than into the Southern Route, where the return on investment would be limited on account of the old age of the Keystone Plant.

On page 4 of appendix L of the application for certificate of public convenience and necessity NS states: "We calculate this (coal-to-truck) diversion will generate \$[ ] in additional cash flow. The economics of additional cash flow seems to be the real motivation for the project, particular with the possibility of using \$ 10 million CMAQ grant funds for the construction of the new rail line. Absent public benefits the grant would amount to a federal subsidy in order for NS to better compete with truck delivery. Clearly, NS is not entitled to CMAQ funds under these circumstances

We now arrive at a situation where NS has garnered 51 % of a the transportation business within 5 years, at the detriment of the local economy in general and destruction of truck shippers business and local coal mine business in particular. Not satisfied with the financial gain from 51 % of that business, NS now proposes to acquire and additional 22 % of the business and, in doing so, inflicts further harm. To add insult to injury NS asks the public to underwrite these damages with a \$ 10 million grant. Moreover, the public would suffer from the destruction of 5.26 miles of pristine country site along the Black Leg River, destruction of wetlands, watercourses, surface drainage, historic archaeological and historic properties. This land would forever be lost for more suitable purposes such as residential inhabitation, recreational activities, or light service industries. The misappropriation of land by NS would significantly impact the future growth and tax base of rural Conemaugh Township.

The public would also suffer irreparable harm as a result of denial of due process, the performance of an EA instead of an EIS, abuse of the protective order, the ex-parte communication, and factual misrepresentations of alleged benefits arising from truck-to-coal diversion. The exceptional brazen actions must not become the accepted procedural rule. For that matter neither can SEA's exceeding its authority and lack of critical review of submitted information be accepted, for the general public would loose confidence in its government. Significant opposition to NS's project asselt in form of a Petition with 179 signatures. Letters from Congressman John Murtha, Congressman Mike Doyle, State Senator White, Pa House Representative Sam Smith, Majority Whip, PA House Representative Rick Geist, Chairman, Transportation, Commerce and Development, and PA House Representative Jeff Coleman are on file.

In regard to the discovery of significant new circumstances, the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) at 40 CFR 1501.7 (c) specifically mandates reopening the scoping period given the substantial nature of petitioners desired changes:

An agency shall revise the determination made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts. -- 40 CFR 1501.7 "Scope" subsection (c).

Also *Sierra vs Froehke* 816 F. 2 d 205,210 (5<sup>th</sup> Circ.1987) reflects quite clearly on the need to supplement the record, when a "new circumstance" arises presenting a "seriously different picture of the environmental impact of the proposed project from what was previously envisioned". Here the new circumstance is the increased VMT.

#### **Motion to Dismiss Application for Certificate of Public Convenience and Necessity**

This Petitioner moves that the Board deny certificate for public convenience and necessity on record at FD No. 33928 for reasons of demonstrating inconsistency with public convenience and necessity under 49 U.S.C. 19901, in particular for failing the three point test, the Board employs under Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000, for ex-parte communication, prohibited under 49 CFR 1102.2(c)(1) and (2), for abusing EIS requirements under CFR 1105.6 (b) (1), failing observe requirements of protective order and abusing protective order, resulting in ex-parte communications, abuse of the power of eminent domain under 15 Pa. C.S.A. § 1511 (a) and (c) eminent domain, as NS's actions clearly harm the public.

#### **Motion to Dismiss the Environmental Assessment prepared by SEA**

This Petitioner moves the Board to dismiss the environmental assessment report and re-institute an environmental impact study as required under 49 CFR 1105.6 (b)(1) and for being completely inadequate. The Petitioner further moves to require NS to conduct a feasibility study under an EIS to determine alternate modes of transportation and modes of power generation at locations more beneficial to the public and utility of local resources prior to issuance of certificate of public convenience and necessity. The Petitioner also moves to require NS to warrant in an EIS that pollution does not occur in the city of Clarksburg.

#### **Motion to Admit Petition Into Public Records and Reopening Scoping Process under NEPA**

The environmental assessment report indicates, on its face, significant new information, which will dramatically alter the outcome of the environmental evaluation. Under Council on Environmental Quality regulations at 40 CFR 1501.7 (c) reopening of the scoping process is mandatory. Applicable precedent in the federal judicial circuit, regarding the requested action - *Sierra Club vs Froehke*, 816 F. 2 d 205,210 (5<sup>th</sup> Circ. 1987) upholds Council on Environmental regulations, finding for reopening or supplementing of stages of the National Environmental Policy Act review, where "new conditions present a seriously different environmental picture".

The Petitioner moves to reopen the scoping process to ascertain that no conflict of interest exists between coal producers, shippers, and recipients of coal.

The Petitioner hereby also moves to allow this petition to be entered into public record under 40 CFR 1501.7 (c)

Respectfully submitted by

*Horst E. Kunig*

Horst E. Kunig, Ph. D.  
P. O. Box 192  
Saltsburg, PA 15681-019

**Certificate of Service**

The undersigned hereby certifies to have caused to send the original and 10 copies of this Petition to The Honorable Vernon A. Williams, Secretary of the Surface Transportation, one copy to Norfolk Southern Railroad Company, Attention Constance Sadler, Esquire on March 3, 2003 by First Class Mail, and additional copies to the following persons:

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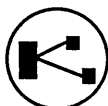
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December 19, 2002

Surface Transportation Board  
Case Control Unit  
Attention Phillis Johnson-Ball  
1925 K Street NW  
Suite 700  
Washington, DC 20423

Re: Environments Assessment (EA) Finance Document No. 33928 prepared by Section of  
Environmental Assessment (SEA) of the Surface Transportation Board (STB)

Dear Miss Johnson-Ball:

SEA has prepared an EA and solicited comments thereto, said comment period of four week to close on December 19, 2002. Based on a telephone conversation, Miss Johnson-Ball extended the comment period to Dr. Horst E. Kunig to December 26, 2002 for good cause shown, as Dr. Kunig was out of the country for two weeks at the end of November 2002. Following is a Response (one original and ten copies) to SEA's solicitation within the extended time period.

1. impropriety of the EA

SEA's has requested comments to the EA for incorporation into a document to advise the STB. This procedure clearly defines SEA's authority, being confined to advisory role. Thus, SEA has no executive power. More specifically, SEA can only advise STB, but it cannot grant NS the right to proceed under an EA instead of an environmental impact study. Procedures undertaken under an EA are therefore improper.

To elaborate the matter further, page 2 of the Motion to Sanction, Reopen, and Related Requests for Relief, Finance Document No. 34079, filed by Attorney Jim Blackburn on September 18, 2002 in behalf of Galvestone Bay Conservation is cited and partially quoted:

Under the Board's own regulations, at 49 CFR 1121.3(a):

A party filing a petition shall provide a case-in-chief, along with its supporting evidence, work papers, and related documents at the time it files its petition.

Filing before the Board is done through the Secretary (49 CFR 1104.1(a)). It follows then, that any petition requires a filing with the Secretary and service on all the parties. At the very least, a petition to proceed under an EA must be brought to the Board by NS and not to SEA, because the Board alone grants the exemption from the environmental impact study. The Board would encounter substantial legal difficulties, if it regularly approved petitions for which SEA had done an EA. Since the Board chose not to notify this respondent, who is a participant in the proceedings of Finance Document No. 33928 and in general the public, this respondent and other parties were irreparably harmed and deprived of due process.

Ex parte communications are prohibited under 49 CFR 1102.2(c)(1) and (2). Any communication between NS and SEA, which led to the SEA's performance of an EA would constitute an *ex parte* communication under the standards:

c) prohibitions,

- (1) No party, counsel, agent of party, or person who intercedes in any on-the-record proceeding shall engage in any ex parte communication concerning the merits of the proceedings with any Board Member, hearing officer, joint board member, or employee of the Board who participates, or who may reasonably be expected to participate in the decision in the proceeding.
- (2) No Board Member, hearing officer, joint board member, employee board member, or employee of the board, who participates, or is reasonably expected to participate in the decision in an on-the record proceeding shall invite or knowingly entertain any ex parte communication, concerning the merits of the proceeding or engage in any such communication to any party, counsel, agent of party or person reasonably expected to transmit the communication to a party or party's agent.

NS deliberations with SEA would appear to constitute a prohibited ex parte communication for failure of filing an appropriate petition for an EA with the Board.

NS failed to file an appropriate petition for an EA with the Board  
 WHEREFORE, this respondent respectfully requests SEA to strike the EA it has prepared and notify all participants in the deliberation process.

2. failure by NS to demonstrate need for construction of new rail line:

Quoting from the EA section 1.1.4, paragraph 2 on page 1-6:

"NS currently delivers 2.2 million tons of coal on an annual basis to the Keystone Plant over the existing Northern Route under a long-term contract (begun on January 1, 2000) with the Keystone Plant. In addition to the coal delivered by rail, another 2.2 million tons per year of Central Pennsylvania coal currently arrives the Keystone Plant by truck. NS anticipates that the Keystone Plant may request the delivery by rail of additional tonnage of Pittsburgh seam coal, with commensurate reduction of truck deliveries. Should this change in demand for rail-delivered Pittsburgh seam coal occur, NS believes the existing Northern Route would not have the capacity to meet all of the Keystone Plant's needs" (emphasis added),

and from EA section ES 5.2, paragraph 2 on page ES-4:

"because portion of the Northern Route are substandard, it is possible that a proportion of the Keystone Plant coal supply, currently delivered by rail, could decrease over time as the line deteriorates" (emphasis added).

Noticeable even to those unskilled in reading legal documents is the speculative rational provided by NS in support of its application. The absence of a letter of intent by the Keystone Plant to purchase more rail-delivered coal precludes approval of NS's application, for, if NS's anticipation of additional coal delivery does not materialize, then the construction of a new rail line would be for no cause.

Moreover, Webster defines substandard as a quality lower than that prescribed by law. Following NS's rational, NS by presently delivering coal over a substandard route, should then be held in contempt of the law and, as a corollary, should stop all coal shipments over the Northern Route. Conversely, continued shipment of coal by NS over the Northern Route suggests that it considers these shipments in compliance with the law, which proves NS's classification of the Northern Route as substandard wrong by its own admission. Therefore, NS cannot justify the need for construction of a new rail line on the basis of sub-standards.

Still, as proven by current praxis, NS supplies coal shipped under contract over the existing Northern Route, albeit in a very inefficient manner of running trains sometimes every day, but

most of the time with daily time lapses. Merely increasing the efficiency of NS's operation by increasing the frequency of running trains every day over the Northern Route, which NS has demonstrated to be not substandard would satisfy all of the Keystone Plant requirements, including any truck-delivered coal. Thus, to its own chagrin, NS has proven that no need exists for the construction of this rail line.

As a corollary, absence of a demonstrated need for construction of the new rail line no environmental impact or assessment evaluation is warranted, and no man-power and no public funds should be expended by regulatory agencies for an unwarranted cause.

WHEREFORE, this respondent respectfully requests SEA to discontinue its assistance in the pursuit of an unwarranted cause, probably initiated by an illegal *ex parte* communication and inform this respondent and the public of the disposition of this matter.

3. inadequate EA presentation:

Mr. F. Olliver's response to the EA, filed on December 17, 2002 scratches only the surface of a wholly inadequate presentation. This EA is riddled with inaccuracies, distortions, spins, improper conclusions to the point of being contrary to the facts. Noticeably absent are raw data, which would allow the public to scrutinize the truthfulness of all assertions. This respondent, in conjunction with consultants, experts in the field, and the general public intends to perform such scrutiny. However, the public is deprived of its right to conduct a meaningful investigation and due process by the wholly unrealistic limitation SEA imposes on the public to allow the comment period not exceeding four weeks. If SEA required several months to prepare the EA, then it cannot expect the public to respond in a matter of four weeks.

WHEREFORE, this respondent respectfully requests an extension of the public comment period for at least 9 months to accomplish mile stones as follows:

|          |  |
|----------|--|
| 3 months | to prepare a list of information required for a meaningful response to the EA, |
| 1 month  | to enable SEA to deliver the requested information                             |
| 4 months | to enable this respondent and the general public to prepare the response.      |

Respectfully submitted,

*M. R. U. 7*

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Certificate of Service

The undersigned hereby certifies to have caused to send the original and 10 copies of the Response to SEA Action to Miss Phillis Johnson-Ball via US Express Mail GB279605414US on December 19, 2002.

Y. Runy

**APPENDIX B**

**REVISED PROJECTED FUEL CALCULATIONS**

## **PROJECTED FUEL CALCULATIONS**

The region will experience substantial fuel savings with the availability of the Southern Route to transport annually an anticipated 3.3 million tons of Pittsburgh Seam coal to the Keystone Plant, with a decrease to approximately 1.2 million tons of Central Pennsylvania coal anticipated to be transported to the Plant via truck. If the Southern Route is not constructed, only approximately 2.3 million tons of Pittsburgh Seam coal would be transported by rail (via the Northern Route) to the Plant, and truck delivery of Central Pennsylvania coal would remain at approximately 2.2 million tons.

To estimate the amount of fuel consumed to deliver coal to the Keystone Plant, gross ton miles (GTM) are divided by a fuel efficiency factor (GTM/gallon). Gross ton miles for truck equal the weight of an empty truck multiplied by the “empty” miles traveled and the weight of the lading plus the weight of an empty truck multiplied by “loaded” miles travel. Gross ton miles for train equal the weight of an empty train (including locomotives) multiplied by the “empty” miles traveled and the weight of the lading plus the weight of the empty train multiplied by the weight of the “loaded” miles traveled. With a truck fuel efficiency factor of approximately 140 GTM/gallon and a rail fuel efficiency of 702.9 GTM/gallon, delivery of approximately 4.5 million tons of coal to the Keystone Plant under the current mix of truck and train transport (2.2 million tons of Central Pennsylvania coal via truck and 2.3 million tons of Pittsburgh Seam coal via the Northern Route, respectively) consumes approximately 2,044,042 gallons of diesel fuel annually. With the shorter round trip distance and greater capacity of the Southern Route, and an anticipated increase to 3.3 million tons of Pittsburgh Seam coal to be delivered by rail and a commensurate decrease to 1.2 million tons of Central Pennsylvania coal to be delivered by truck, approximately 1,772,192 gallons of diesel fuel would be consumed annually to deliver 4.5 million tons of coal to the Keystone Plant. Thus projected overall truck and train annual fuel savings to be realized with utilization of the Southern Route to transport 3.3 million tons of coal to Keystone Plant would be approximately 271,850 gallons.

Additional energy savings would occur with an increase beyond current volumes in the tonnage of lower sulfur coal deliverable over the Southern Route. As indicated at Section 3.6.2 of the EA, the BTU value of Central Pennsylvania coal is 12,300, whereas the BTU value of Pittsburgh Seam coal is 13,000 to 13,100. Accordingly, more Central Pennsylvania coal must be burned to generate the same amount of power produced by Pittsburgh Seam coal. Therefore, an increase in the mix of the Pittsburgh Seam coal and a decrease in the mix of the Central Pennsylvania coal used by the Plant provides energy benefits for the generation of power.